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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MARK I. SOKOLOW, et al.,

4 Plaintiffs,

5 v.

04 CV 397 (GBD)

6 PALESTINE LIBERATION
7 ORGANIZATION, et al.,

8 Defendants.

9 New York, N.Y.
10 February 19, 2015
9:30 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge

14 APPEARANCES

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24
25

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(Trial resumed; jury not present)

THE COURT: Good morning.

Most of our jurors are here so we can start as soon as they are arrive.

I understand there were some questions about the podium. You can move it as close to the middle of the jurors as far as it can stretch if it's convenient.

MR. ROCHON: We have worked that out.

MR. YALOWITZ: We have figured out something that I think will work for the three of us. It is amazing. It finally happened.

THE COURT: I gave you what I consider at this point, unless there are further suggestions, what I consider to be the final of the verdict form. You see I have made some minor changes consistent with what we have discussed, but otherwise I assume that's the way we are going to go with the verdict form.

Mr. Rochon.

MR. ROCHON: Agreed.

THE COURT: Mr. Yalowitz.

MR. YALOWITZ: What we got from Ms. Clerk last night is fine with us. There was a letter that came in from the defendants, I think after that but maybe before, asking for some additional language.

MR. ROCHON: The language didn't go to the verdict form.

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1 MR. YALOWITZ: The verdict form we are done with.
2 Neither side is happy with it.

3 THE COURT: Then it must be good.

4 Also, with regard to the jury charge, that's pretty
5 much it. I have got one letter with regard to one item.
6 Before I address that, is there anything else, Mr. Yalowitz,
7 with regard to the charge?

8 MR. YALOWITZ: I would like to go back to several
9 things, but I think that we shouldn't.

10 THE COURT: Anything new?

11 MR. ROCHON: Same here. Nothing that hasn't already
12 been raised.

13 THE COURT: Let me address this one sentence.

14 What is your position, Mr. Yalowitz?

15 MR. YALOWITZ: I think it is redundant and confusing.

16 THE COURT: Mr. Rochon.

17 MR. ROCHON: It's hard to see it as redundant because
18 we don't otherwise say what the activities are. It can't be
19 redundant.

20 THE COURT: I don't feel strongly one way or the other
21 and I can be convinced by one side or the other on this one. I
22 deliberately took it out because my view of both the law in the
23 abstract and the particular facts put before this jury that are
24 relevant to that determination, I don't believe that it is
25 required that it be regularly conducted activity. One could be

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1 responsible for respondeat superior even for something that
2 isn't regularly conducted.

3 If I gave a person an assignment, even if it was an
4 unusual assignment, in considering the factors that I lay out
5 for the jury to consider, they can still evaluate whether or
6 not -- if I sent my law clerk out to the bank for me, even
7 though I don't regularly do that, it is not an automatic
8 determination, and we lay out the factors to be considered
9 which are beginning on page 54 at the bottom.

10 I say: Among the factors you may consider in deciding
11 whether an employee was acting within the furtherance of the
12 PA's activities and within the scope of his authority, you may
13 include the connection between the time, place and occasion for
14 the act, the history of the relationship between the PA and its
15 employee as spelled out in actual practice, and then I say,
16 whether the act is commonly done by such an employee, the
17 extent of the departure from normal methods of performance, and
18 whether the specific act was one that the PA could reasonably
19 have anticipated. If you find that the employee caused the
20 injury to the plaintiff while acting within the scope of his
21 authority in furtherance of the PA's activity, then the PA is
22 legally responsible for the employee's conduct.

23 So it seems to me the more appropriate analysis by the
24 jury is to consider certain factors and one of the factors to
25 consider is whether the act is commonly done by the employee,

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1 and another fact to consider is the extent of the departure
2 from normal methods of performance and whether the specific act
3 was one that the PA could have reasonably anticipated.

4 I am not sure if I just throw in a line this simply
5 says employees's usual activities that they regularly conduct.
6 I am not sure what I am telling them legally.

7 MR. ROCHON: I think all of the things you said are
8 there for Mr. Yalowitz to argue.

9 THE COURT: They are there for you to argue also.

10 MR. ROCHON: I agree. However, the sentence that
11 you're talking about is one that I think is a standard part of
12 that normal instruction on respondeat superior. Therefore, it
13 does give some guidance as to how at least in the first
14 instance a juror should look at activities.

15 There is clearly not only this instruction but in the
16 agency instruction, the scenario in which you're describing is
17 available to Mr. Yalowitz to argue. However, we don't have
18 anything in here now that describes activities. It's all as to
19 scope.

20 THE COURT: This doesn't describe activities either.

21 MR. ROCHON: It gives a sense of what that means is
22 the regularly conducted activities.

23 THE COURT: It doesn't have to be a regularly
24 conducted activity. It is a factor to consider.

25 You think legally it has to be a regularly conducted

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1 activity? Is that what you're trying to get me to give to the
2 jury, that it has to be a regularly conducted activity?

3 MR. ROCHON: I think you have to define the word as it
4 is in the instruction.

5 THE COURT: Define which word?

6 MR. ROCHON: Activities.

7 THE COURT: That's not a definition of activities.

8 MR. ROCHON: Those that it regularly conducts.

9 THE COURT: That's a definition of usual activities.
10 That's not a definition of activities. It doesn't define
11 unusual activities. It doesn't define activities that are
12 either characterized as usual or unusual.

13 MR. ROCHON: Judge, our position would be that, first
14 of all, deviating from the standard instruction we would
15 suggest to the court is not appropriate here especially when we
16 are dealing with a situation such as this where it's an entity,
17 we all agree it's a governmental entity we are talking about,
18 and we should give some guidance, and this gives some guidance.

19 THE COURT: What is the guidance you're trying to give
20 to the jury? What is it that you want to argue from this
21 sentence? What do you want them to conclude from this
22 sentence, that it has to be a regularly conducted activity for
23 there to be liability on respondeat superior?

24 MR. ROCHON: I think what will happen is, in the
25 absence of some specific situation like you describe, where

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1 there is a specific directive that it would go outside the
2 normal activities --

3 THE COURT: I assume every one of these acts one could
4 consider outside their normal activities. They don't every
5 day, even if they were found to be liable, they don't every day
6 send someone out to commit a terrorist act.

7 MR. ROCHON: This is why the instruction is helpful
8 for the jury to know they have to look for specific evidence.

9 THE COURT: They need to do what?

10 MR. ROCHON: Specific evidence as to whether this is
11 within the scope.

12 THE COURT: The specific evidence I give them is that
13 they should consider whether or not it's the usual --

14 MR. ROCHON: Which is why my language isn't
15 prejudicial to the plaintiffs and it is part of the standard
16 instruction and especially in a case where you are also, over
17 our objection, giving agency, to the degree the acts were
18 specifically authorized, which is what the court is
19 hypothesizing, Mr. Yalowitz has plenty to argue.

20 THE COURT: Mr. Yalowitz, let me hear from you and
21 then I will make a determination.

22 MR. YALOWITZ: He already got activities instead of
23 interests. Now he is trying to slice the salami even further,
24 which I guess that is effective lawyering if he gets it. But
25 it's not part of the standard instruction to say what he is

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1 asking to say.

2 I remember this because we proposed an edit to get
3 away from the business issue. This was a definition of
4 business. So once you take out the word business, you don't
5 need a definition of business. So it's either redundant
6 because it's going back to activities or it's confusing or it's
7 both. I just think you have thought through these instructions
8 very carefully, the parties have argued and argued and argued
9 over them, you have given everybody lots of leeway to make
10 their arguments. I think it's time to lock it in and move
11 forward.

12 That's my view unless you have any questions.

13 THE COURT: Let me just consider something first.

14 Mr. Rochon, I am trying to understand whether or not
15 you mean to try to describe the employer's usual activities or
16 the employee's usual activities.

17 MR. ROCHON: Employer's. That's where the sentence
18 comes from in the standard instruction. My purpose is to
19 describe employer's.

20 THE COURT: I just don't remember the standard
21 instruction, what was the sentence before this in the standard
22 instruction?

23 MR. ROCHON: In the standard instruction, your
24 sentence before includes both conducted activities and
25 furtherance in one sentence, and the standard instruction first

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1 has a sentence about business or activities and then has this.

2 THE COURT: Which standard instruction?

3 MR. ROCHON: I didn't bring --

4 THE COURT: Which standard instruction? Are you
5 talking about the PJI instruction or the Sand instruction?

6 MR. YALOWITZ: It's from the pattern jury. It's from
7 New York Pattern Jury. It's 2:235.

8 MR. ROCHON: I know where it was in your February 13
9 draft.

10 THE COURT: I need to know in what context the
11 standard instruction gave this sentence.

12 MR. ROCHON: I understand, your Honor.

13 THE COURT: 2:235? Just a second.

14 MR. YALOWITZ: I am happy to read it to you. I don't
15 have the book with me.

16 THE COURT: I do have the book in front of me and I
17 have it tabbed.

18 2:235. Mr. Rochon, it's not in that instruction. I'm
19 not sure.

20 MR. ROCHON: I am going from memory. It may be in
21 Sand. But I know it was in the standard instruction.

22 THE COURT: The instruction that I have is pretty much
23 what 235 is. It is not in 235. I can show you it.

24 MR. ROCHON: I know when you put it in your proposed
25 instruction that I understood it to be from the standard, from

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1 Sand, because you had had it in your February 13 draft. Then
2 when we redid it, I noticed it was out.

3 THE COURT: I may have taken it from one of the
4 proposed instructions that you gave me, and I may have taken it
5 out after I looked at the standard instruction and considered
6 it in context.

7 You need to tell me where it comes from so I can make
8 some determination, because it doesn't come from the
9 instruction on employer/employee scope of employment. I can
10 show it to you if you want. If you think there is another
11 instruction I should be looking at.

12 What did you propose? Did you propose this?

13 MR. ROCHON: I am not going to go with my memory
14 because I had been thinking about something else all night. So
15 I if I am wrong, I will be called to task for it.

16 MR. YALOWITZ: Sand doesn't have it.

17 THE COURT: I don't think Sand would have it.

18 Do you know where that language comes from, Mr.
19 Yalowitz?

20 MR. YALOWITZ: I think they kind of mixed and matched.
21 When you're using business, which is what the pattern jury
22 instruction does, you need to give the jury some guidance about
23 what is business.

24 THE COURT: Which was the pattern jury instruction on
25 business that you used?

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1 MR. YALOWITZ: I don't have the book, but my request
2 was an act was within the scope of employment in furtherance of
3 the employer's business.

4 THE COURT: Do you know where you got that from?

5 MR. YALOWITZ: 2:235.

6 THE COURT: You modified it. That's not what 2:235
7 says.

8 MR. YALOWITZ: Do you want me to take a look at the
9 book?

10 THE COURT: Sure. Our jurors aren't here yet. We
11 will start as soon as they come.

12 235 is consistent with what I have here. It's almost
13 word for word what I have here.

14 MR. ROCHON: May I ask the court a question. You're
15 going to instruct them after lunch?

16 THE COURT: I will instruct as soon as all of the
17 summations are done.

18 MR. ROCHON: We may also address this after the
19 closings.

20 THE COURT: We might be able to. I am only using this
21 time because the jurors aren't here yet. We will stop as soon
22 as the jurors are here.

23 MR. ROCHON: I won't use that sentence in my closing.

24 THE COURT: I didn't give it a great deal of thought,
25 but when I thought about it I took it out. I don't remember

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1 where it came from to get it in there in the first place.

2 MR. YALOWITZ: I don't know either. 2:237 talks about
3 employer's business.

4 THE COURT: Right.

5 MR. YALOWITZ: Maybe I made it up.

6 THE COURT: Is it in 2:237?

7 MR. YALOWITZ: No.

8 THE COURT: I just don't know that that language is
9 from a standard jury instruction. It may be language you
10 incorporated from a case. Again, I just don't have a
11 recollection. Obviously I thought about it because I crossed
12 it out and I took it out.

13 MR. ROCHON: Right. At one point it was in there. I
14 am going to do this. I will know better before you instruct
15 and I won't use that in my closing. So it would only be in
16 your instructions if I persuade you to use it.

17 THE COURT: I'm not even sure what you would say even
18 if I gave it to you now. I don't think you can legitimately
19 say it can't be respondeat superior unless they find that it
20 was the usual activity that's regularly conducted by the
21 employer. I don't think you can legally say that. That's not
22 true. That's not what this language says.

23 MR. ROCHON: That's why there is arguments. I agree
24 there are arguments available to Mr. Yalowitz both under
25 respondeat superior and agency along those lines.

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1 THE COURT: If you want this language, you have got to
2 give it to me in the context. You have got to tell me what I
3 am trying to instruct the jury on. And either I am telling
4 them that this is important or not important. Either I am
5 telling them it's one of the factors they should consider, so I
6 should put it in the factors portion, or I am saying this is
7 something that is required before they can find respondeat
8 superior.

9 The latter I don't think is a correct statement of the
10 law, and that's not even what this says and that's not what you
11 requested that I say. To just throw this sentence in, I am not
12 sure what direction that takes the jury. I will look around
13 even while you're summing up and see from earlier drafts where
14 this language came from, but it's not the standard language in
15 this instruction that I have utilized.

16 I think we are like two or three jurors away. So
17 hopefully any minute -- many times the marshals bring them up
18 in a group and we will be ready to go.

19 MR. YALOWITZ: I don't remember the defendants asking
20 for a respondeat superior.

21 THE COURT: I don't remember that either. I remember
22 when I first got the instructions, I know that I had gotten
23 instructions from you and objections from them. I may have
24 gotten a later instruction from them, but I don't have it at
25 hand.

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1 So it's more likely what I did is I looked at your
2 requested instruction and then I went back to the standard
3 instruction and I think I made it closer to the standard
4 instruction than what you asked for.

5 I have your proposed instruction number 15. As a
6 matter of fact, in this discussion it is in your requested
7 instruction. That's where it comes from.

8 MR. YALOWITZ: Right. It may come from --

9 THE COURT: It says, employer's business is regularly
10 conducted business.

11 MR. YALOWITZ: Ms. Romeo reminds me, we may have
12 gotten this from 803(6) or something.

13 THE COURT: Well, you cite *Bushey* and pattern
14 instruction 235. It's not in 235. So you must have pulled it
15 out of *Bushey*.

16 I didn't read the whole sentence. An employer's
17 business is its regularly conducted activities, whether
18 commercial or noncommercial. That may be why it came out
19 because you asked me to take out the commercial and
20 noncommercial. That may have been the time that I took this
21 out. As I say, I don't see this as part of any standard
22 instruction.

23 MR. YALOWITZ: I agree with that.

24 MR. ROCHON: Once again, we have what is called
25 reversible error.

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1 THE COURT: You are only against what the other is
2 for.

3 MR. ROCHON: I thought it was a brilliant suggestion.

4 THE COURT: You criticized the suggestion.

5 MR. YALOWITZ: He may have thought at some point it
6 was brilliant, but in his objections he thought it should come
7 out.

8 THE COURT: I will look at *Bushey* while you're summing
9 up and if I think it's worth a further discussion I will. I
10 think just throwing the sentence in now out of context, I don't
11 think that's particularly useful to the jury.

12 If you want to argue those factors, as I say, this is
13 not the normal method and not commonly done by the employee,
14 and make those arguments, even if you want to say it's not
15 regularly conducted business, you can argue that, but I don't
16 know that the jury needs a legal instruction. I am not going
17 to tell them that that's required.

18 We are about ready to go. We still have one or two
19 jurors missing. We are all set up for the streaming. I will
20 indicate in front of the jury that we have the cameras for an
21 overflow room. Someone asked about that. If you're going to
22 ask about it, then they will have concern about that. I will
23 just let them know that's all it is. It's not a recording of
24 the proceedings and they are not on camera. It's just
25 streaming the summations to another courtroom, overflow

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1 courtroom.

2 We will start as soon as they walk in.

3 MS. WEISER: We have one small housekeeping issue. I
4 raised this with Mr. Rochon, but he wasn't receptive or you
5 came in.

6 THE COURT: I assume I came in.

7 MR. ROCHON: You did.

8 THE COURT: What would you like?

9 MS. WEISER: We wanted to ask that a few of the
10 plaintiffs be permitted to sit up front.

11 THE COURT: I already resolved that and said yes about
12 an hour ago.

13 Is it not being done?

14 MS. WEISER: We will effectuate that now that we know.

15 THE COURT: There are two open seats right there. I
16 didn't know how crowded it was going to be. If you want to
17 utilize those seats, you may.

18 MS. WEISER: Thank you, your Honor.

19 THE COURT: We are almost full but not full yet. I
20 know some people were told that summations would start at 10:00
21 so I think some people will still be trickling in.

22 (Pause)

23 MR. YALOWITZ: Your Honor, do we have a minute before
24 we get started?

25 THE COURT: Yes. We are waiting for one juror.

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1 MR. YALOWITZ: I will just be back in one minute.

2 THE COURT: OK.

3 MR. ROCHON: What time do you let them go?

4 THE COURT: I have ordered lunch for 12:30. I am
5 probably going to shorten their lunch. So I am probably going
6 to give them 45, 50 minutes for lunch so we can continue.

7 MR. YALOWITZ: So if I am on, you want me to just find
8 a breaking point?

9 THE COURT: Yes. If you start on or before 12:00,
10 sure. Then sometime between, my law clerk will hand me a note
11 as soon as their lunch arrives and maybe we can hand it to one
12 of your colleagues and they can hand it to you and you can find
13 a convenient place to stop.

14 MR. YALOWITZ: There will be natural breaking points.

15 MR. ROCHON: Normally I don't like to have lunch
16 between counsel's closing, but if we have got to, we have got
17 to.

18 THE COURT: We are talking about almost day-long
19 summations. So there is nothing we can do about that. We are
20 talking about four, five hours of summations.

21 MR. ROCHON: I thought he said he was going to two
22 hours.

23 MR. YALOWITZ: I thought I said I would be seven
24 hours.

25 MR. ROCHON: I remember two.

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1 We will see how it goes.

2 My question, actually, was at the end of the day what
3 time do you usually let jurors go?

4 THE COURT: This is what I do. If I can give them the
5 jury instructions and send them in to deliberate, say no later
6 than 4:30 or so, I will say to them they can deliberate as long
7 as they like beyond 5:00. But if at any time at 5:00 or later
8 they wish to adjourn for the day and come back and continue
9 tomorrow, they can just send us a note saying they are ready to
10 adjourn and we will adjourn.

11 MR. ROCHON: If there is not a verdict today, as we go
12 forward, how do we know every day that they are done so we know
13 they are free?

14 THE COURT: You will be back in court before I
15 discharge them.

16 MR. ROCHON: You will excuse them every day in court?

17 THE COURT: Yes.

18 If I say that to them and it starts to become 6:30,
19 7:00 and I haven't heard from them, I may bring them back out
20 and say it's late. If they think they are on the verge of a
21 verdict and they want to continue, I will usually say given the
22 hour, it's late for the jury.

23 MR. YALOWITZ: 7:00 is a half day for us lawyers.

24 THE COURT: You won't have anything to do tonight.

25 Are we good?

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1 Ladies and gentlemen, we are ready to go. We are
2 going to get the jury and we will begin with summations.

3 (Continued on next page)
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(Jury present)

THE COURT: Good morning, ladies and gentlemen, please be seated.

Ladies and gentlemen, we are prepared to move forward with the summations, closing arguments of the lawyers. Let me just make a couple of comments before we do that.

You will notice there is just a camera here in the corner. The rules are that courtroom proceedings are not to be recorded or filmed. So that's not what is happening. What is happening is we have an overflow room for other interested public who might want to watch the summations in another courtroom and this is just streaming to that other courtroom. That's the purpose of this camera. It's focused on the lawyers, it's not focused on you or me. So that is the purpose of that.

Ladies and gentlemen, before we begin the summations, let me just remind you of two things. One, what the lawyers say is not evidence. Two, it is your recollection of the testimony that controls.

So with those two reminders, we will start with the closing arguments for the defendants by Mr. Rochon.

Mr. Rochon.

MR. ROCHON: Thank you.

So much sadness. So much unbelievable sadness and death and injuries over an extended period of time.

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Summation - Mr. Rochon

1 So many unnecessary losses. So many lives that were
2 affected and hurt.

3 On the screen are Plaintiffs' Exhibits 496, 634 and
4 635 from the United States of America that documents some of
5 the sadness and injuries that were occurring at that time. Out
6 of all of that sadness, all of those injuries, all those
7 deaths, all those souls extinguished, we take six incidents and
8 we bring them to you for you to decide. Not all of those
9 deaths, not all of those injuries, not all of that sadness.
10 Six incidents.

11 The reason I focus on that as I begin is because we
12 are not here to decide the Second Intifada. We are not here to
13 decide who was right or wrong in all those deaths and injuries.
14 We are not here to decide any of that. And even if we were, we
15 don't even have the tools to do it. Judge Daniels has worked
16 hard to try to keep this case focused on the these actual
17 incidents that we are here to try, the actual incidents, not
18 all the sadness, not all the death, not the conflicts, not the
19 occupation, not all that political stuff.

20 Sure, we heard about some of that because it surrounds
21 the incidents, but the core issues in this trial are not those
22 things. And I start that way because if we focus on the
23 incidents instead of some general focus on Palestine this or
24 policies here, if we focus on what evidence has been offered on
25 the incidents themselves, there is only one set of verdicts you

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Summation - Mr. Rochon

1 can return, and that is that the PA and the PLO are not liable.

2 I start here as well because so much of this trial
3 focused on things other than specific evidence of those
4 incidents.

5 So in my closing argument I want to talk to you about
6 what the evidence was that came in and how it did not relate to
7 your actual task. Then I want to talk to you about the
8 evidence that does relate to these incidents. Because the
9 danger, ladies and gentlemen, the danger -- if there is one
10 thing I am worried about as I stand here, if there is one thing
11 I am worried about is someone is going to judge my client
12 because of who they are and not for what they didn't do.

13 I am afraid that because so many broad statements have
14 been made, so many policies have been discussed, so much
15 evidence that has nothing to do with these incidents have been
16 brought before you, that a judgment could be rendered if you
17 did do your job on something other than the evidence as to
18 these six incidents.

19 As I told you at the beginning of the trial, my name
20 is Mark Rochon. I am honored to be before you. I am honored
21 to represent the Palestinian people, the Palestinian
22 government, and the PLO in these cases. And as I stand before
23 you on their behalf, I want to work with you so that at the end
24 of your service, you can return the hard verdict, but the right
25 verdict.

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Summation - Mr. Rochon

1 Because if there is one thing in this case that cries
2 out, every one of us it cries out to, if something can be done
3 to stop the loss that these people suffered, we would do it.
4 If something could be done to take away the pain that these
5 people suffered, we would do it. If you could simply make it
6 go away, I know each and every one of you would make it go
7 away. But you don't have that power.

8 One thing I really don't want to happen is for the bad
9 guys, the killers, the people who did this, to get away while
10 the Palestinian Authority or the PLO pay for something they did
11 not do and what you know caused them harm.

12 The Palestinian Authority and the PLO did not benefit
13 from these tragedies. The Palestinian Authority and the PLO,
14 as they were in 2002, still today, you heard from the
15 witnesses, the issues continue, things haven't changed, there
16 is no state. These incidents are by the extremists, the bad
17 guys who keep the good things from happening, and a verdict
18 against the Palestinian Authority or the PLO would only damage
19 the government and the PLO who do not deserve it.

20 So as I talk with you a little bit, let me just say
21 first thing, did you ever think you would know so much about
22 the Oslo Accords as you learned in this case? And I am sure
23 you heard far more about them than you would like to hear.
24 There was a lot of this evidence that came in. You might have
25 been saying to yourself, why am I hearing about this? And I

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Summation - Mr. Rochon

1 understand that. Because we are lawyers, we sometimes think
2 things are important and put them into evidence. I am
3 including me, and definitely including the other side as well.
4 We think they are important. But then now we come to closing
5 and we talk about, OK, what is the evidence that actually
6 matters in this case? What is the evidence that goes to these
7 six incidents?

8 Well, I think it is important for you to know a little
9 bit about our clients at the beginning of the trial and
10 throughout the trial. So the PLO and PA, you heard evidence
11 about them and who they are. So let's talk about it.

12 So this was we will call it a fledgling government. A
13 government that was just getting started. This wasn't the
14 United States 226 years after the Declaration of Independence.
15 This was the Palestinian Authority in 2001, '2, '3, '4, less
16 than a decade after it was invented and at a time when, you
17 know from the evidence, there were tremendous impediments to
18 governments.

19 Now, if we can go to the first slide, Justin.

20 I am not as well coordinated on these slides, but I
21 will get through it.

22 One of the things I want to talk to you about, this
23 government of the Palestinian Authority, there was some
24 testimony about its size.

25 I asked General Faraj: How many total personnel in

F2J8SOK1

Summation - Mr. Rochon

1 the Security Forces were there in 2003?

2 Answer: 38,000 to 40,000 different security
3 personnel, including everybody -- police, security,
4 intelligence, Gaza, West Bank. The whole thing.

5 Then how many total employees?

6 100,000 in 2003.

7 Think about that. If you look at this case from one
8 side of the telescope, you look at this case and you say, wow,
9 look at these incidents, there were a lot of PA employees
10 involved in these incidents. They might be liable. Then you
11 get around the other end of the telescope and you say, holy
12 cow, that is less than one-tenth of one percent of the PA
13 employees were involved in this incident. In any government,
14 in any society, sometimes people who do terrible things happen
15 to be government employees. Sometimes people who do terrible
16 things happen to work for the security services. Does that
17 mean every single time someone from the security service does
18 something the security service is liable?

19 So what end of the telescope do you look at things
20 from? That's why we put that in front of you. So that you can
21 understand that in reality of this case, and your common sense
22 told you this even if I hadn't brought the General over here,
23 that this is a ridiculously small number of employees who were
24 involved in these incidents.

25 And that matters. So you cannot infer simply from the

F2J8SOK1

Summation - Mr. Rochon

1 fact that it was an employee that there is liability. Even if
2 you were tempted to do that, Judge Daniels is going to instruct
3 you on the law as to when you can hold an organization liable
4 for what its employees do. And I will get to those
5 instructions later. But for right now the point is that there
6 were a lot of employees and we are here talking about the acts
7 of a very small number that were not within the course of their
8 employment, but were things they did for their own reasons.

9 And you know that there was a lot of disruption in
10 that area. I am just going to give you some of the disruption
11 that was there. You heard about something, first of all,
12 called Operation Defensive Shield. That was the witness on
13 videotape, Shrenzel. Shrenzel said that started March 29,
14 2002. Another witness said it was near the end of March 2002.
15 So we'll take that.

16 Was that the first incident where there was some kind
17 of damage of the PA's security structure? No.

18 Take this guy Munzar Noor. He is the guy who was
19 convicted for being involved in the Wafa Idris bombing that
20 hurt the Sokolow family. So this guy Munzar Noor, when he had
21 his statement that he gave, it says: Three days after the
22 attack, on January 30, 2002, blank came to arrest me. He goes
23 on to say: After 40 days, Israeli aircraft bombed the Mukataa
24 in Ramallah and I was released.

25 So 40 days after January 30, I am no mathematician,

F2J8SOK1

Summation - Mr. Rochon

1 but I think we are talking about March 9 or 10 of 2002.

2 There was the testimony -- I think we have it here --
3 of Raja Shehadeh. And Raja Shehadeh testified about
4 when -- you remember, he was the Palestinian author, the short
5 guy, who came here and testified last week I think. And he
6 said -- and I apologize for calling him a short guy if he is
7 here. He said the Ramallah police station, what the condition
8 was in October of 2000. October 12, 2000, it was destroyed and
9 its condition was it became completely leveled.

10 Was any part of the structure remaining standing and
11 operable after October 12, 2000?

12 After it was leveled there was nothing left.

13 Then the PSS headquarters in 2002, where he said, you
14 can see, on April 2, 2002, it was heavily destroyed.

15 If you can go to 496. I think it's the next one.

16 You don't have to take the word of Noor or Shehadeh
17 for the destruction. Because the United States government, in
18 a PLOCCA report, said: During the incursions, the PA security
19 forces in the West Bank were severely damaged both in manpower
20 and equipment. The headquarters of the PA's principal security
21 office in the West Bank was destroyed by the IDF.

22 By the way, it's hard to remember all of these
23 exhibits in evidence, but you remember the guy Eviatar, one of
24 their experts kind of early in the case, one of these IDF
25 intelligence officers, I actually showed him that and he said

F2J8SOK1

Summation - Mr. Rochon

1 he disagreed with that.

2 We will talk about bias a little bit. When you have a
3 trial, when we bring the Palestinian Authority over here, the
4 PLO over here for trial and we have them tried for these six
5 incidents, I want to stop right here. How did that trial work?
6 If you could step back and imagine. The Palestinian Authority
7 and the PLO have not had the greatest relationship with the
8 Israeli Defense Forces over the last couple of decades. I
9 think we can all agree.

10 MR. YALOWITZ: Objection.

11 THE COURT: Overruled.

12 MR. YALOWITZ: Not in evidence.

13 THE COURT: Overruled.

14 You can respond.

15 MR. ROCHON: You know from the evidence in this case,
16 in case there was any doubt, the IDF, according to the United
17 States, destroyed the headquarters. So there is no question
18 that there was some bias of an Israeli defense intelligence
19 person as against the PA and the PLO.

20 I guess there would be bias, maybe if there was a
21 Palestinian security person coming in to testify as to Israel,
22 they would say he was biased. But Mr. Faraj didn't come in to
23 testify against Israel. He came in to talk to you about what
24 happened in the West Bank during a certain period of time. He
25 didn't ask you to conclude misconduct by Israelis. That's not

F2J8SOK1

Summation - Mr. Rochon

1 what we are here to do.

2 But you bring the Palestinian Authority and PLO over
3 for this trial and when you put on evidence against them, the
4 only people you can put on to show their liability, the only
5 people who put up their right hand, swear to tell the truth,
6 and come in to say something against them are IDF intelligence
7 officers who served there during the time.

8 Ladies and gentlemen, step back and think if in your
9 own life, your own interests were going to be decided based on
10 the sworn testimony of supposed experts who are in that same
11 posture towards you as these two witnesses, Shrenzel and
12 Eviatar, were as against my client. Objective, uninterested,
13 or biased?

14 I will mention this right here. He even said,
15 Eviatar, that the United States report on the damage was wrong.
16 So who are you going to believe? The IDF intelligence agent
17 who comes in to try to create liability for my client or the
18 United States of America's report on the same issue? That's a
19 demonstration of bias.

20 Let me go to the next slide.

21 The first one talked about the damage done. I showed
22 this to Eviatar as well. And he said: The United States of
23 America, in this PLOCCA report, following the March and April
24 IDF operations in the West Bank, the PA security force's
25 ability to resume regular security cooperation is significantly

F2J8SOK1

Summation - Mr. Rochon

1 diminished. Many PA security facilities and much of their
2 equipment and weaponry have been destroyed or confiscated.

3 It was a fledgling government working under the most
4 difficult circumstances imaginable. Not just like the
5 differences with Israel and this occupation, but you heard from
6 General Faraj, you also have these other crazies trying to
7 undermine the government: Hamas, Hezbollah, outside
8 influences. Just imagine trying to have a government that
9 tries to keep the situation under control in those
10 circumstances.

11 This trial asks a lot of you. It asks you to take
12 your common sense that you're born and live with, but then to
13 apply it to something I bet was foreign to you when this trial
14 started. You had those questionnaires and some of you knew a
15 little about this, some of you didn't know about the overall
16 issues, but this case does require you, in being fair, to think
17 about the government there, and to think about the forces
18 there, and to think about the fact that, whether you like it or
19 not, some security officers, some people, some individuals will
20 do cursed things to others, terrible things, and unspeakable
21 things.

22 And then you're going to hold the government liable
23 for what those individuals did. I don't think you will. I
24 think you will be asked to, but I don't think you will because
25 it's not the right thing.

F2J8SOK1

Summation - Mr. Rochon

1 Now, as the trial proceeded, the plaintiffs in their
2 opening and their witnesses put on a whole lot of evidence
3 about stuff that did not relate to any of these incidents. I
4 will give you some examples.

5 Prisoner payments. You now are all ready to be
6 full-time experts on Palestinian policies regarding prisoner
7 payments. So they put on witnesses. They made arguments.
8 They went through them. They had a big chart up here. 17
9 million shekels a month for prisoner payments.

10 Palestinian Authority, I told you in the opening they
11 pay prisoners. I told you in the opening they have martyrs
12 payments. I told you in the opening those were our documents
13 that showed those things. If I were to ask you right now, and
14 I am not so don't answer out loud -- I am not allowed to ask
15 you questions -- but if I were to ask you right now, do you
16 think that's a good set of policies? Maybe most of you say no.
17 Maybe one or two of you say yes. Maybe some of you will say I
18 don't know enough yet. And none of those answers matter
19 because none of those payments caused these incidents to
20 happen.

21 You heard those payments were made before the Second
22 Intifada. They continue today. They have been made in times
23 of not a lot of violence, in times of a lot of violence, and in
24 times again of not a lot of violence. They don't cause these
25 things. There is no evidence that anyone did anything to get a

F2J8SOK1

Summation - Mr. Rochon

1 prisoner payment.

2 Think about that for a second. Right now, if I were
3 to offer you the wonderful opportunity to sit in an Israeli
4 prison in order to receive \$1500 a month, who is going for
5 that? Nobody. Those payments, those policies -- General Faraj
6 explained them to you -- you may agree with it, you may not
7 agree with it. When you boil it down, there is not only no
8 evidence saying one did it to get them, but payments were all
9 made after the fact, and by logic they could not have caused
10 the act.

11 To the degree that the plaintiffs relied on the fact
12 that the numbers were big at some point and became larger, I
13 would have to ask them, did everybody in 2002 know that some
14 day the Palestinian Authority was going to increase the amount
15 of money that would be paid to prisoners in 2011 so it was a
16 good time to get in on the growing business of being a
17 Palestinian prisoner so some day you can get a little bit more
18 money? Why did we spend so much time on how much people were
19 getting paid in 2011 or '12 or '13? What did it have to do
20 with this case? It has to do with them trying to make the
21 Palestinian Authority look bad.

22 What about martyrs' payments? It's foreign to us
23 something called paying martyrs.

24 (Continued on next page)

25

F2JTSOK2

Summation - Mr. Rochon

1 MR. ROCHON: There is zero evidence. And common sense
2 tells you nobody killed themselves so their family could get 600
3 shekels a month. Nobody.

4 But you don't have to take my word for it. Their
5 expert, Israel Shrenzel:

6 Sir, you would agree that the payments to prisoners
7 and their families were not the primary objective for
8 committing the crime, right?

9 No. Then he goes on.

10 Although it's nice to know once you are in jail you
11 get your salary, et cetera, you would agree that payments of
12 money to families of martyrs did not motivate the suicide
13 attackers to do attacks.

14 Of course that was not a motivation.

15 Next page. He agreed again that he previously
16 testified that suicide attackers didn't do so in order for
17 their families to receive payments.

18 Yes, and I stick to it.

19 You said that that would will not be logical, correct?

20 Yes.

21 You also testified that you didn't have any evidence
22 that the perpetrators in these cases did their crimes in order
23 to receive prison payments, correct?

24 Yes.

25 So common sense and their expert tells you that's not

F2JTSOK2

Summation - Mr. Rochon

1 why these things happen. So it's interesting. You guys know a
2 whole lot about prisoner payments and martyr payments, but do
3 you have any evidence that they caused these incidents to
4 occur? No.

5 And as far as the prisoner payments that the martyrs'
6 payments and other payments made, you know there was a
7 background where there were tremendous financial consequences
8 that were going on in the society as a result of this conflict.

9 Next slide.

10 So in this time period -- and this is again from a
11 United States report, Exhibit 635, that during these incursions
12 that we talked about earlier when the Israeli defense forces
13 stayed in most Palestinian cities for months at a time, that
14 they demolished the homes of families of suicide bombers and
15 wanted men.

16 Next slide.

17 You know from the documents put in by the plaintiffs
18 that Ali Jara, the suicide attacker in the last incident, the
19 house of his father was blown up. Hilmi Halmash, who is one of
20 the other perpetrators, the army demolished his house. Abdel
21 Mouseih, another one of the perpetrators, his house in the
22 particular refugee camp was demolished. It was a terrible
23 time. It was a terrible time. That's why if you were forced
24 to try decide who's right and who's wrong, you would have a
25 heck of time doing anything. We haven't given you the tools to

F2JTSOK2

Summation - Mr. Rochon

1 figure out is this policy right or is this policy right. Are
2 home demolishments of people's homes who were not involved
3 right? Are prisoner payments right?

4 MR. YALOWITZ: Objection.

5 THE COURT: Overruled.

6 MR. ROCHON: That's not why we're here.

7 The verdict form will not say to you, ladies and
8 gentlemen, if you were the prime minister of the Palestinian
9 Authority, would you have martyr payments? Would you have
10 prisoner payments? It's not going to be on the verdict form.

11 The verdict form will ask you to decide whether the
12 evidence relates to these incidents, and that evidence
13 conclusively does not.

14 What about promotions that they talked about? They
15 spent a lot of time talking about people getting promoted. And
16 when the guy was on the stand he says the president approved
17 this promotion specifically, as if President Arafat or Abbas
18 personally said: That guy, I'm going to promote him, that
19 specific one guy, I'm going to give him a promotion.

20 Then Mr. Hill stood up and showed the witness that the
21 promotions were on a form that had hundreds of people being
22 promoted at the same time. And the notion that it was done
23 specifically by the president was simply because all promotions
24 are done by the president because that's how militaries work.
25 So there was nothing specific as to these people, it was an

F2JTSOK2

Summation - Mr. Rochon

1 effort to exaggerate the testimony.

2 Promotions after the events occurred cannot cause the
3 event to have occurred. There's this thing I learned about in
4 college, it's called the time space continuum, which sounds
5 fancy, but I believe -- I didn't do that well in physics, I
6 think it means basically if something happens after something
7 else, it cannot have caused it. So the promotion after the
8 event cannot have caused the event to have occurred. It's just
9 a way for the plaintiffs to try to make the Palestinian
10 Authority look bad and take your eye away from the ball of
11 these incidents.

12 I will say when I was a young lawyer they didn't let
13 us have water in the courtrooms. Things were really formal.
14 And now that I'm at the age that I need to go to the restroom
15 every 30 minutes no matter what, I can have all the water I
16 want. I have never been so well hydrated in my life as in this
17 trial.

18 So what I want to talk about with you as well, that
19 other general stuff that the plaintiffs put into evidence and
20 that don't relate to these incidents, such things as they put
21 in -- they like these police periodicals. Do you remember
22 those periodicals that they put into evidence, some police
23 magazine or something?

24 And they liked those, and I'm sure they scoured them.
25 I'm sure they looked at all that had ever been written, I am

F2JTSOK2

Summation - Mr. Rochon

1 sure they looked and looked. And one word about one of these
2 incidents in one of those magazines? Ladies and gentlemen, no.
3 Take them back there. Read what they put in. One word about
4 any of these incidents? No.

5 Or they put in these Israeli Defense Forces, the same
6 guys who were the experts, the Israeli Defense Forces, when
7 they did these incursions, they seized documents, said there
8 were hundreds of thousands of document they seized. And they
9 come in here and put in these reports. And I know it's hard to
10 parse through this stuff, but in those reports, those IDF
11 reports that say all these bad things about my client,s out of
12 cherry picked document that they found was there any word about
13 any of these incidents? No.

14 So here's the reality, it's like the police, thinking
15 that something bad is going on, decided to execute a search
16 warrant at the biggest drug house in the world, the entire West
17 Bank, and they come in with tanks and police and they seize
18 documents, laptops, they seize all these hundreds of thousands
19 of documents. They say we're going to charge these guys with
20 these six incidents based on the evidence we found. And they
21 stand before the jury and they say but none of the evidence we
22 found talks about those incidents, because not one word in
23 those files discusses the Hebrew University bombing, the
24 Sokolow incident, Ali Jara's bombing, the Hashaika bombing, the
25 Ramadan shooting, the incident where they say some guy Awada on

F2JTSOK2

Summation - Mr. Rochon

1 June 19 did something. Not one word about those incidents or
2 showing any support for them.

3 And on the police magazines, they put in something --
4 I don't think I have it on the screen, but they put in a
5 magazine that is pretrial Exhibit 175, and Mr. Yalowitz had the
6 witness read from it or he read from it. And they read this
7 portion of it, and they said -- it sounded bad, they liked it,
8 the magazine -- this was the best they kind of come up with,
9 out of all the magazines, the European nation -- I'm quoting
10 from pretrial Exhibit 175. The European nations and the U.S.,
11 who have strategic interests in the region, are called upon to
12 see the necessity of urgent and immediate action to stop
13 Israeli practices against the Palestinian people. Without
14 this, their vital interests should be directly jeopardized and
15 this shall redound adversely on their peoples and communities.

16 I guess they thought it sounded threatening or
17 something. That's what they decided focus on. That has
18 nothing to do with these issues. But Mr. Yalowitz, he forgot
19 to read the next paragraph. Oh. Since the Arab and Islamic
20 communities in those countries play a prominent role pressuring
21 these governments by turning out for impressive -- what kind of
22 marches -- peaceful marches aimed at getting foreign nations to
23 exert positive and effective pressure on Israel. These
24 communities speak the word of truth and justice in relation to
25 our Palestinian people who continue to suffer under the most

F2JTSOK2

Summation - Mr. Rochon

1 extreme example of occupation in the world.

2 Wow. Those police magazines really do help you decide
3 this case, don't they? All they show is that there was
4 rhetoric, and I'm sure there was rhetoric on both sides.
5 Rhetoric is not evidence. Just like the words of counsel
6 aren't evidence, although I hate to admit it, rhetoric of
7 politicians is not evidence either. And so these police
8 magazines are just a distraction because there's language in
9 there that they think makes my client looks bad even though it
10 doesn't go to these incidents.

11 So they also liked to talk about Marwan Barghouti a
12 lot. Shubaki. These doing convictions are so long, I don't
13 even know, 50, 60, 120, I don't know how many pages long. So
14 they like to talk about Shubaki and they like to talk about
15 Marwan Barghouti. They like to say bad things about them.

16 And then you go, and if you were to take the time and
17 read their convictions that the plaintiffs put into evidence
18 and you were to try to look for these incidents, in the Shubaki
19 verdict you would find zilch. Nothing. The man was convicted
20 of things, but not these incidents. You go to the Marwan
21 Barghouti one, and if you parse through it, and it's hard, but
22 if you take the time, you will learn that Marwan Barghouti was
23 not convicted for any of these incidents.

24 But let me tell you something they did not highlight,
25 Marwan Barghouti was actually charged with one of these

F2JTSOK2

Summation - Mr. Rochon

1 incidents, the January 22nd incident, and not found guilty.

2 So to the degree that the Marwan Barghouti conviction
3 or the Fuad Shubaki conviction tells you anything, what it
4 tells you is that Marwan Barghouti was charged with one of
5 these incidents and not convicted of it, and not even charged
6 with any of the others. Shubaki was not even charged with any
7 of these incidents. Why did they want to talk about them?
8 They're supposedly senior people.

9 So who is Marwan Barghouti? He's a congressman. Now
10 I'm not from around here, you probably figured that out, I'm
11 from Washington. I read the papers. And I don't mean this in
12 any kind of offensive way, but sometimes congressmen around
13 here do some pretty crazy things. Sometimes congressmen are on
14 TV doing things that one would not approve of. Every time a
15 congressman does something, he or she is not implicating the
16 national government of the United States of America.

17 So Marwan Barghouti's a politician in the Palestinian
18 Legislative Council. He got a PA paycheck the same way that
19 representative took stupid pictures on my Snapchat I wish a
20 hadn't taken, or representative beat up somebody, or
21 representative solicited a prostitute the way guys in Congress
22 sometimes do. They all got U.S. government paychecks.

23 Your representative in Congress gets a green paycheck
24 just like other people in the government. That does not mean
25 when they say something that they're saying it for the United

F2JTSOK2

Summation - Mr. Rochon

1 States of America and the United States of America can be held
2 liable for it. That does not mean when they do something that
3 the United States of America did it.

4 Marwan Barghouti is a politician who apparently likes
5 to mouth off. No offense to Mr. Barghouti, but that's what
6 politicians do. And he made statements, and when he spoke, he
7 spoke for himself, he did not speak for the PA, he did not
8 speak for the PLO. He's a politician.

9 And they want to say well, he was the leader of Fatah.
10 Well, if this case was called Sokolow versus Fatah, then
11 whoever was the lawyer for Fatah could talk about that. But
12 Fatah is not here. They want to say but he was the spiritual
13 leader of the Al Aqsa Brigades and led them, and all these
14 cases are Al Aqsa Brigades. So why don't we see what the
15 Israeli verdict as to the Al Aqsa Brigades in the Marwan
16 Barghouti case had to say.

17 If I could get 451.

18 So in that verdict, paragraph 169, you will see that
19 contrary to the theory of the plaintiffs here, which is they
20 got this notion that it's the PLO creates the PA and the PLO is
21 Fatah and Fatah ran the Al Aqsa Brigades and Marwan Barghouti
22 was their leader, so anything that anyone ever claimed for the
23 Al Aqsa Brigades my client should pay for. I guess that's
24 their theory, and it is punishment for something someone else
25 did.

F2JTSOK2

Summation - Mr. Rochon

1 So what did the Israeli court system say about the Al
2 Aqsa Brigades? Did they say it was this well-organized
3 coordinated led entity? And this is in Marwan Barghouti's case
4 where the Israelis are trying them: From the overall body of
5 evidence it becomes apparent that the Al Aqsa Brigades were not
6 an organized body under one leader, but rather a collection of
7 field cells with each one having its own commander.

8 That is pretty important stuff, because that's the
9 Israeli court system.

10 And there was a guy who sat in that seat, raised his
11 right hand and swore to you that the Al Aqsa Brigades was not
12 that, and that the Al Aqsa Brigades was responsible for each of
13 these incidents. That guy's name was Shrenzel. And he tried
14 to tie all of the incidents except the Hebrew University
15 incident to the Al Aqsa Brigades as if it was a single unit
16 taking responsibility for these things. Is that what that
17 says?

18 Who are you going to believe, a paid expert who has
19 animosity against the very people against whom he's testifying,
20 or common sense given this verdict that they say you should
21 rely on?

22 So ladies and gentlemen, they had a lot of generic
23 evidence, payments, IDF stuff that doesn't talk about these
24 incidents, Marwan Barghouti and Fuad Shubaki that doesn't talk
25 about these incidents. So why don't we do this, for the first

F2JTSOK2

Summation - Mr. Rochon

1 time in a long time why don't we talk about what the supposed
2 evidence is as to these six incidents and see if it stand up to
3 the test. The test that falls on the plaintiffs.

4 As we do that, if we could go to the next slide,
5 multiple claims, multiple defendants, please. The great thing
6 about this technology for someone who has organizational
7 challenges like myself, Justin can keep me in line.

8 So this is one of the jury instructions that Judge
9 Daniels will read to you. It's pretty basic. Each defendant
10 is entitled to your separate consideration. The question of
11 whether liability has been proven is personal to each defendant
12 and must be decided by you as to each defendant individually on
13 each claim.

14 That makes sense, right? That's not rocket science.
15 But I mention it to you now, and I want you to think about the
16 PLO and the PA. Two defendants, two trials. Double duty for
17 you.

18 The evidence as to the PLO in this case, first of all,
19 they have got this respondeat superior stuff, and that is the
20 law that applies to holding an employer liable for what an
21 employee does. In this case, that instruction does not apply
22 to the PLO because there are no employees of the PLO who are
23 alleged to have done these. The theory the plaintiffs have
24 can't even be responsible for employees.

25 So what did the PLO do? I know it's -- people hear

F2JTSOK2

Summation - Mr. Rochon

1 the word "PLO," and you heard that before and think well that's
2 good or bad, but let's stand back and ask you think about this
3 evidence. Ask yourself, what did the PLO supposedly do? Well,
4 they say Yasser Arafat is the head of the PLO. They put that
5 into evidence.

6 And what else did they put in evidence that somebody
7 senior from the PLO was doing here? You think about it for a
8 minute. They talk a lot about all these guys in the PA
9 security forces. That's the PA. They talk a lot about the
10 policies. That's the PA. So really, where is the PLO
11 evidence? I think they just want you to treat these two
12 defendants alike. I think, ladies and gentlemen, that that is
13 not the kind of jurors you are, that you don't judge
14 collectively, you judge individually. That's why you're here.
15 And think, as we go through these incidents, think, as he's
16 talking for however long he talks, about what is the evidence
17 that is specific as to the PLO in this case.

18 And then we get to the incidents themselves. And
19 actually maybe before we do that, let's talk about one more
20 thing. Expert witnesses, let's talk about them for a second,
21 because their liability case, that's Kaufman, Shrenzel and
22 Eviatar. Kaufman is the guy who moved in the convictions
23 through him. Eviatar and Shrenzel are the two guys who tried
24 to deliver to you the liability of the PA and the PLO by saying
25 things.

F2JTSOK2

Summation - Mr. Rochon

1 And the judge is going to instruct you on expert
2 witnesses. And one of the instructions will be that in
3 weighing the expert's testimony -- at the bottom of the first
4 paragraph -- you may consider the expert's qualifications, his
5 or her opinions, his or her reasons for testifying, as well as
6 all of the other considerations that ordinarily apply when you
7 are deciding whether or not to believe a witness's testimony.

8 And it's that last part as well as all the other
9 considerations that ordinarily apply that is really important.
10 Because the credibility matters, the credibility of witnesses
11 matters, experts and others. So that will be the instruction
12 that the judge will give you on expert witnesses.

13 So when it says that you can consider all the other
14 factors, maybe we should look at part of the credibility
15 instruction. So this is an excerpt from an instruction that
16 the judge will give you on credibility. And the first part of
17 this says if a witness is shown knowingly to have testified
18 falsely concerning any material matter, you have a right to
19 mistrust such witness testimony in other particulars, and you
20 may reject all of the testimony of that witness or give it such
21 credibility as you may think it deserves.

22 Remember Shrenzel? Shrenzel had this testimony about
23 how Tawfiq Tirawi was the most wanted man, and if they could
24 have gotten their hands on him, they would have locked him up.
25 Because we said to him: Tawfiq Tirawi wasn't convicted of

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Summation - Mr. Rochon

1 anything, was he? And he had this non-responsive answer. He
2 didn't just say that's right, he wasn't convicted of anything,
3 he started talking about that he was the most wanted man and we
4 weren't able to get him, but if we could have, we would have.

5 Then you heard from Faraj, said the guy was traveling
6 around freely, meeting with the Israelis on security
7 coordination, discussing issues, traveling abroad, going to
8 Israeli checkpoints, no restrictions on travel. Shrenzel did
9 not tell you the truth. Shrenzel exaggerated or intentionally
10 misspoke when he talked about that. And you can consider that
11 in evaluating all his other evidence.

12 So when they put him on yesterday by video, Shrenzel
13 is up there, he didn't clear that up for you yesterday. He
14 didn't explain how it was that he falsely claimed to you that
15 Tawfiq Tirawi was the most wanted terrorist or something,
16 Tawfiq Tirawi couldn't be caught. It wasn't true is what the
17 evidence shows, ladies and gentlemen, and you can consider that
18 in evaluating his testimony.

19 And you also know it wasn't true because the way he
20 answered his questions, because just above that portion -- and
21 I forgot to put it on a slide, but just above, you do not have
22 to accept the testimony of any witness -- excuse me, on the
23 credibility instruction, in addition, you're going to be asked
24 in terms of evaluating the testimony how does the witness --
25 the things you can consider: Was the witness candid, frank and

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Summation - Mr. Rochon

1 forthright, or did the witness seem as if he or she was hiding
2 something, being evasive in some way. Then the judge will say:
3 How did the witness the witness testified on direct examination
4 compare with the way the witness testified on
5 cross-examination?

6 So take Eviatar and Shrenzel. When they're on direct
7 examination, they respond to every question just the way the
8 person wants it to be responded to, directly, succinctly. And
9 when they're on cross-examination they're asked a simple
10 question like Tawfiq Tirawi wasn't convicted of these
11 incidents, was he, and they make speeches to try to get things
12 in, to be non-responsive, to change the way they testify, to
13 play games. When I questioned Eviatar, I could asked him what
14 day it was, and he would have testified that the Palestinian
15 Authority was responsible for everything that ever happened.

16 MR. YALOWITZ: Objection, not in evidence.

17 THE COURT: Overruled.

18 MR. ROCHON: The fact is you know from the way they
19 answered their questions, when I'm standing here talking to
20 that guy, and he's on the witness stand and I asked him a
21 simple question, did he respond the way he did to him, or does
22 he try to make a speech?

23 When Mr. Hill asked Shrenzel questions, did he respond
24 to Mr. Hill the same way he did with Mr. Yalowitz, or did he
25 try to make a speech? Did he have an interest in the outcome

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Summation - Mr. Rochon

1 of the case? You know he did by the way he answered the
2 questions and the fact that he did not tell the truth.

3 When we get to the instructions on liability, the
4 judge -- if we go to the one that begins, "In order to prove,"
5 at the beginning. When the judge is going to give you some
6 instructions on respondeat superior and agency, he is going
7 to -- Judge Daniels is going to read: In order to prove that a
8 defendant is liable for a particular claim under the ATA,
9 plaintiffs must demonstrate the involvement of a senior
10 official or other person having duties of such responsibility
11 that his or her conduct may fairly be considered to represent
12 the PLO or PA.

13 I just want to be clear, when I say Judge Daniels is
14 going to read this, it's not like -- this is the kind of thing
15 that lawyers discuss with the Court before closing. So it's
16 not like a predicting something we don't know about or
17 guessing, it's the kind of thing that we work out with the
18 Court in advance.

19 This is an instruction that is very important. It
20 applies to all of their theories. All of their theories.
21 Unless they show you to a preponderance of the evidence that
22 involvement of a senior official or other person having duties
23 of such responsibility that his or her conduct may fairly be
24 considered to represent one of my clients, your verdict is not
25 liable, not liable, not liable, not liable, not liable, not

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Summation - Mr. Rochon

1 liable, six times.

2 And they don't have that evidence. Because when you
3 look at the people they say did these things, you're going to
4 know that under respondeat superior theory, which applies only
5 to the PA, that they were not acting as part of their duties
6 within the scope of their employment.

7 And when it comes to anything as to the PLO, you're
8 not going to have anything that shows any of those people
9 involved in these six incidents, and certainly not someone who
10 is a senior official or a person with duties of such
11 responsibility, as this instruction says. This instruction
12 applies to and will be at the beginning of the instructions on
13 respondeat superior and agency. It applies to all of their
14 theories. So when you look at the evidence, you need to be
15 aware of that.

16 And in that regard, let's talk about what the United
17 States of America has said about that.

18 Plaintiffs Exhibit 634. There is no conclusive
19 evidence that the senior leaderships of the PA or PLO were
20 involved in planning or approving specific acts of violence.

21 Done and dusted.

22 It's only the United States of America. Eviatar would
23 say believe the IDF instead. But you can't do that. There is
24 no conclusive evidence that the senior leaderships of the PA or
25 PLO were involved in planning or approving specific acts of

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Summation - Mr. Rochon

1 violence.

2 We are here to decide whether or not senior leadership
3 of the PA or PLO or other persons having duties of such
4 responsibility did those things. So I would suggest to you
5 that no matter what Colonel Eviatar thinks, that the position
6 and investigation and report of the PLOCCA, the United States
7 of America, matters a little bit on that issue, whether Colonel
8 Eviatar likes it or not.

9 I would like to move now -- I will come back to the
10 actual instruction on respondeat superior, but I would like to
11 now discuss with you the evidence that actually came in as to
12 the specific events.

13 So first we'll talk about the incident on
14 January 22nd, 2002 involving Said Ramadan.

15 First of all, as to this incident and the people
16 convicted in it, there are no individuals who match that
17 definition of senior leadership or senior official, as Judge
18 Daniels will instruct you.

19 There is no evidence of any PA equipment being used,
20 of any PA gun being used. He used a gun, no evidence of it
21 being a PA gun.

22 In fact, the evidence is that Said Ramadan had a
23 personal motive to avenge the death, a friend of his had been
24 killed. And that's in pretrial Exhibit 362 on page 5:265.
25 Ahmed Barghouti paid for things for him. And in pretrial

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Summation - Mr. Rochon

1 Exhibit 357, page 5:189, it said he paid with his own money,
2 bought him sneakers or food or something.

3 There is no evidence that it occurred in a place where
4 the PA security officials operate because they weren't allowed
5 to operate in Jerusalem.

6 There is no evidence that it involved a time of day
7 when any PA person, low level who was convicted of that, was
8 even on duty.

9 There is no evidence that it was directed by anybody
10 from the PA.

11 What they have is a low-level conviction in Israeli
12 court and no evidence that it's within the scope of employment.
13 You might as well take someone who is off duty on their job and
14 does something terrible and say let's hold the employer liable.

15 And the thing they want to latch on to the most is
16 that he was promoted. Said Ramadan had a posthumous promotion.
17 They want to talk about that. And the question you have to ask
18 yourself: Was he promoted because he died, because of how he
19 died, and does it matter? Because is there any evidence Said
20 Ramadan was even thinking about that on the day that he
21 committed this horrific act.

22 In fact, is there any evidence in this case at all as
23 to any of the incidents, any of the people who did them were
24 doing them at the direction or behest of the Palestinian
25 Authority? They want you to infer that from the absence of

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Summation - Mr. Rochon

1 evidence. And that's not how it works.

2 I want to move next to the incident on January 27,
3 2002. We often refer to this as the Wafa Idris incident. This
4 one I want to take a couple minutes on, because it's very
5 interesting how the evidence was presented to you. And I use
6 that word loosely, because the way the evidence was presented
7 to you might have given a false impression.

8 So Wafa Idris. Wafa Idris was not a PA employee. The
9 guy who was convicted -- she worked for the Red Crescent, which
10 is like the Red Cross over there. The guy who was convicted is
11 this guy Munzar Noor. He worked for the Red Crescent, not the
12 PA. So far, zero for PA. They have no evidence that you could
13 rely on to say that a PA person was involved whatsoever, let
14 alone a PLO person. There is no PLO at all.

15 So they put in this statement of this guy Noor, and
16 they're going to talk to you about it, and they're going to say
17 that Idris went to the Mukataa and that's where she got the
18 bomb. And they want you to decide if she went to the Mukataa
19 and got the bomb there, it must have been a PA person that gave
20 it to her.

21 Let me ask you this, she was there. She wasn't a PA
22 person. There's no evidence that only PA people would be
23 there. So you cannot infer guilt simply because that's where
24 she got the bomb without any evidence that shows you as to from
25 whom or for what or for what purpose or what was said.

F2JTSOK2

Summation - Mr. Rochon

1 But there's more. They put in the conviction of
2 Munzar Noor but not, I suggest to you, the most important part.
3 So if we could go to that conviction, which is 322, and on the
4 third page, I want it really take my time here.

5 This is what the court said when they convicted Munzar
6 Noor. And what they said was: At the same time, before we
7 detail the supporting elements found in the defendant's
8 statements and weave them together with the extrinsic evidence
9 supporting the facts in the indictment, it is worth noting that
10 the defendant's admissions in this case gradually came to
11 confirm the accusation. That is, as the interrogation
12 continued, his statements became more compete and detailed.
13 This may be seen to be a natural development of the
14 interrogation with the subject initially not being willing to
15 admit to all of the suspicions, but as the interrogation
16 develops he reveals many more elements of the truth. Hence we
17 found it appropriate to reject the defense counsel's request in
18 his summation to specifically adopt the first statement and not
19 the later ones.

20 Wow. I wonder what his later statement said. His
21 later statement, 465. This is, as you will see in your binder,
22 if you take your binder on the incident involving Ms. Idris and
23 you look at his statements, you see two statements in there.
24 And the second and later dated one is 465.

25 What does it say? Does it say Mukataa? In the home

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Summation - Mr. Rochon

1 of blank we sat down. Later, after she returned to blank's
2 house, later on I was with her at blank's house. The day
3 before the attack the three of us, blank and Wafa Idris and I
4 met in blank's house.

5 Oh. That's just the days before the attack. What
6 about on the day of the attack Wafa Idris was late in arriving
7 and taking the explosive device from. Wafa Idris should have
8 been at place. There is a word that is missing there, isn't
9 there? The word is called Mukataa.

10 The statement that the court found reliable is not the
11 statement that the plaintiffs rely on to ask you to find the PA
12 and the PLO liable for something they did not do. This
13 despicable act of Wafa Idris and Munzar Noor was not the act of
14 the PA or the PLO. And the only evidence that they offer to
15 you to say it is is a statement this guy supposedly gave where
16 he referenced supposedly the Mukataa, and from that they ask
17 you to hold the PA and the PLO liable. If that holds the PA
18 and PLO liable, we didn't need a trial, you could find him
19 liable for every bad thing that ever happened.

20 That, ladies and gentlemen, is their evidence.

21 The only other thing they offer you is they said well,
22 it was an Al Aqsa Martyrs Brigades incident. Says who?
23 Shrenzel. Based on what? Shrenzel said so. No, I mean what
24 evidence? No evidence. It's called Shrenzel said so. This
25 isn't a Shrenzel said so trial. We have trials based on

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Summation - Mr. Rochon

1 evidence not Shrenzel said so. He offered nothing to say it
2 was Al Aqsa Martyrs Brigades, but frankly that doesn't matter
3 because I don't represent the Al Aqsa Martyrs Brigades. And my
4 client is not responsible -- neither of my clients are
5 responsible for the Al Aqsa Martyrs Brigade or Brigades or
6 loosely organized cells or whatever they are did or did not do.
7 That's their Sokolow Idris evidence. And you know what, it's
8 nowhere near enough to hold the PA or PLO liable for this.

9 If you move next to the March 21st, 2002 incident, in
10 which Hashaika was the suicide attacker, you see the same
11 failures of evidence as are similar in the first incident we
12 spoke about.

13 The evidence on this -- we can go to the first of the
14 slides here. So when you look at the indictment of Mohammed
15 Hashaika -- actually this is from Abdel Karim Aweis. The
16 defendant and blank convinced Mohammed Hashaika not to believe
17 the Palestinian Authority intelligence officer out of fear that
18 he would hand him over to Israel.

19 Again, you got to stop and think about what that
20 means. You have this guy Abdel Karim Aweis, who was a PA
21 employee, and he was convicted of this, terrible human being,
22 and he's the one who is working with Hashaika. And according
23 to the indictment -- this isn't Abdel Karim Aweis, this is the
24 indictment of the guy, the charges of which he was convicted.
25 It says that he and blank convinced him not to believe the

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Summation - Mr. Rochon

1 Palestinian Authority intelligence officer out of fear he would
2 hand him over to Israel.

3 What does that tell you? It tells you that the
4 Palestinian intelligence officer they thought would turn him
5 over to Israel. They want to hold us liable even though the
6 theory of the court against the guy who did it was that he had
7 to hide it from the Palestinian Authority intelligence officer
8 or else he would have turned him over. That is crazy town,
9 ladies and gentlemen. To say that we should be held liable
10 even though the evidence against Abdel Karim Aweis was that he
11 was hiding it from the PA intelligence officer.

12 That is a perfect example of how someone can be an
13 employee but not be acting within the scope of their
14 employment. That's their evidence.

15 You can go to the next slide, please.

16 Moreover, as you already know, this guy Hashaika was
17 originally arrested by PA. So the guy is under arrest,
18 transferred to Ramallah, imprisoned there, and it says during
19 the invasion into Ramallah he escaped from prison and intended
20 to perform his operations, and people responded to that because
21 Al Aqsa Brigades have taken him from them. That's his escape.
22 The plaintiffs like to point out that that document has a date
23 on it. Big deal. The date is after the event. They want to
24 suggest there is stuff they made that up and put it in there.

25 You know, ladies and gentlemen, if the Palestinian

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Summation - Mr. Rochon

1 Authority was making up stuff to put in these GIS files, they
2 would look a lot different. Right? I mean they love these GIS
3 files, the plaintiffs. Every single time there is something
4 bad in there that says said that they did something heroic or
5 some other terrible thing, they think that's the God's truth
6 and you should believe it, and everything in them is true,
7 unless, of course, there is something they don't like, in which
8 case they say it's made up.

9 So I guess the idea is that the Palestinian Authority
10 was going through the files to make stuff up and forgot to take
11 out the bad stuff, including the bad stuff that is in this very
12 file that the plaintiffs also like. They can't have it both
13 ways. The evidence of Hashaika escaping is just as good as the
14 other evidence from these GIS files.

15 The next slide, please.

16 Again, the aforementioned escaped during the invasion
17 into Ramallah and intended to perform an operation on behalf of
18 Islamic jihad but Al Aqsa Brigades had taken him.

19 On the incident -- you can go to the final one, or the
20 next one, there's one more there, which would be I think
21 Exhibit 1060. So the plaintiffs want to rely on this a lot,
22 and this one is 1060, and they want it say that this suggests
23 that Mohammed Hashaika -- this one of that documents of his
24 arrest -- that he was in the Palestinian Islamic jihad. And
25 they try to make a lot out of the fact that it's to the

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Summation - Mr. Rochon

1 president, and it's from this guy Tawfiq Tirawi, and because
2 the letter is closed with the matter is at your Excellency's
3 discretion, they want to argue that means that they
4 intentionally let him out. I know it seems crazy that they
5 want to argue that by the way someone closes out a letter to
6 the president, but that is what they want to argue. They want
7 to argue that because the letter closes to say the matter is at
8 your Excellency's discretion, from that fact you should
9 conclude that they let him out as opposed to the evidence that
10 shows he escaped. That's not a basis to conclude that. That's
11 how you would close a letter to a boss, at least in the formal
12 setting like this, to the president. That's their evidence.

13 Even, however, if their theory that Abdel Karim Aweis
14 got him out, and that's their theory, were true, and even if
15 you assume that Abdel Karim Aweis got to prison and grabbed
16 this guy and got him out, you already know from the other
17 evidence I showed you that Abdel Karim Aweis was acting without
18 authority, not with authority. He's just an employee. He's
19 not a high-level employee. He doesn't meet that standard.

20 This case turns on Abdel Karim Aweis, who is not of
21 sufficient authority that you should attribute his actions to
22 the PA, and certainly not that he was acting within the scope
23 of his employment in the PA. And there is in fact evidence in
24 the plaintiff's own case that he was hiding his activities from
25 the Palestinian intelligence.

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Summation - Mr. Rochon

1 So that is their case, in essence, as to Hashaika.

2 Now I would like to turn to the incident from June 19,
3 2002. This is the incident involving the Mandelkorn incident.

4 And so I thought I would look at their binder,
5 actually, before I get to that. My colleagues, who are smarter
6 than me, handed me a note and told me what I forgot to do.

7 Could we go to 233, please, and thank you.

8 So this is the memo about Tirawi, and this goes back
9 to the Idris incident, and I forgot to put this up here. We
10 had the lady testify to that yesterday, Amhah Reehan, the woman
11 who wrote this. And the testimony on this is as follows,
12 Shrenzel even admitted that this did not show prior knowledge
13 of Tirawi. Shrenzel himself, the guy who always reads the
14 worst into things. I could quote you the specific place where
15 he said it.

16 Here's the memo, and in it she says at the night in
17 which it was revealed that the person who carried out the
18 attack was Wafa Idris. And before anyone claimed
19 responsibility for the attack, Tawfiq Tirawi supposedly did
20 this stuff.

21 Here's where we are on this: Number one, what was the
22 basis for what is in there? Gossip. That's what she said.
23 She wrote it. Did they ask her any questions on that? No.
24 Not one question. Not one challenge to what she said. She
25 said it was based on gossip. And that is the unrebutted sole

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Summation - Mr. Rochon

1 testimony as to the basis for the information in this document.
2 And Mr. Yalowitz chose not to ask her one question about it.
3 And gossip is not evidence, even when it's written down.

4 And in any event, what it says is that before anyone
5 claimed responsibility for the attack, actually does not say
6 before anyone knew that Wafa Idris did it, those are two
7 different things. The woman said that there was a big
8 gathering in her community where people were talking about it,
9 and this was the gossip out there. So obviously they knew in
10 her community. The only thing that this supposedly said is
11 before anyone claimed responsibility for it, that this guy had
12 called the family. So it does not prove prior knowledge. And
13 when cross-examined on this by Mr. Hill, this very document
14 cannot provide us with a conclusive final proof of his final
15 knowledge of the attack. That's Shrenzel.

16 He went on say terrible stuff about Tawfiq Tirawi.
17 This guy was willing to say anything about Tawfiq Tirawi under
18 the sun. This guy accused Tawfiq Tirawi of stuff although it
19 proved to be false and was demonstrated to be false, and even
20 he said that it did not provide final proof of his prior
21 knowledge of the attack.

22 So if Shrenzel is not willing to go that far, I dare
23 say you ought not be willing to go that far. But he did not
24 know what you learned from the woman who wrote it. She took
25 the stand, she took the oath, she told you the circumstances of

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Summation - Mr. Rochon

1 it, un rebutted gossip. That's the memo about which they made
2 so much.

3 So I was turning, before I went back to that which I
4 forgotten, to the June 19 incident. They have a binder for
5 each incident, so the June 19 binder, this is for French Hill,
6 Jerusalem. So you go through this binder, there's no
7 convictions of anybody.

8 In fact, you go through this binder and you look real
9 hard for the date June 19, you won't find it. There are
10 convictions in here, I'm sorry. To be fair, there's
11 convictions of like Shubaki and Barghouti that have nothing to
12 do with the June 19 incident, they just threw it in there. So
13 go through the binder and look at the table of contents and
14 come across it, and got all the IDF reports, you know, these
15 guys like they don't mention the incident, they really like
16 putting the IDF reports in here. They have got the verdict in
17 the Fuad Shubaki case, got nothing to do with this case, threw
18 in documents about giving money, \$600 to three guys, nothing to
19 do with June 19, another document about \$800, nothing to do
20 with June 19. They have got one of these PLOCCA reports. They
21 threw in the Barghouti conviction, nothing to do with June 19.
22 They went with the Majid Masri conviction, nothing to do with
23 June 19. They went with, just to be complete, the Nasser Aweis
24 conviction. The guy is not convicted of this.

25 So where do you find anything about June 19 in this

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Summation - Mr. Rochon

1 binder? Well, in the martyr file for the guy Awada, who they
2 say did it, you don't find the date June 19.

3 If we could go to that, please.

4 He was martyred on June 18 while executing the
5 Jerusalem Martyrdom Operation. That's not the day of the
6 incident, that's the day before. They don't say where this
7 happened. This one happened on French Hill. I think there's
8 another slide there. The next one.

9 So what is in this binder at page 6 of Exhibit 496 is
10 one of those PLOCCA reports.

11 (Continued on next page)

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F2J8SOK3

Summation - Mr. Rochon

1 MR. ROCHON: What it says is just after the end of the
2 reporting period, on June 18 and 19, two suicide bombers killed
3 26 Israelis. And Arafat condemned these.

4 So from that report you know there was an incident on
5 the 18th and an incident on the 19th. They brought liability
6 against my client for an incident that happened on the 19th and
7 their evidence of it happening shows a martyr file for a guy
8 who says blew himself up on the 18th, not even the day of the
9 Mandelkorn incident. And that guy wasn't a PA employee.

10 So you have a tragedy, a Palestinian who blew himself
11 up, according to his martyr file, on June 18th in Jerusalem,
12 you have a report from the United States that says something
13 happened on the 18th and 19th, and the only evidence that this
14 guy Awada has anything to do with this case -- Shrenzel said he
15 was sure that the date was wrong in the martyr's file -- is
16 because Shrenzel said so.

17 MR. YALOWITZ: Objection.

18 THE COURT: Overruled.

19 MR. ROCHON: The plaintiffs can't even on that
20 incident establish for sure that the person who they say blew
21 himself up is the right person. But even if he is, even if
22 this guy Awada, his file is wrong, and in fact he is the person
23 who did this attack on the 19th, what your evidence is that
24 someone who did not work for the Palestinian Authority
25 committed a suicide attack, and Al Aqsa Martyrs Brigade took

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Summation - Mr. Rochon

1 credit for it, according to the file. And Shrenzel, of course.

2 That is it. If you're going to say the PA or PLO is
3 liable for that one, then we didn't need a trial. We could
4 have just lined up everything that ever happened in this period
5 and say the PA and PLO is liable. Because you need evidence,
6 not just say-so, and not just Shrenzel.

7 Then you go to the Hebrew University incident. Maybe
8 the most despicable of all, although you hate to choose because
9 they are all despicable.

10 And before we get there, I want to talk to you a
11 little bit about damages because I told you in opening that
12 during a large part of the trial I wouldn't be jumping up and
13 asking questions, and I actually lived up to it. Lawyers don't
14 often do that. So for two weeks we had testimony from
15 psychologists, psychiatrists, doctors, economists, and the
16 victims and their families in these cases. And in the course
17 of those two weeks I asked one question.

18 And why did I do that? Of course, I could have asked
19 questions to try to suggest if damages were even overstated or
20 if some witnesses were less credible than others, or some
21 witnesses seemed to be more exaggerated than others. I didn't
22 do that because I didn't need to. Because, first of all, you
23 have common sense and you were evaluating that testimony and
24 you could distinguish among them. And there were parts of that
25 testimony where there wasn't a dry eye in the house, including

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Summation - Mr. Rochon

1 the guy sitting in this chair. Anybody who has got a mother,
2 father, sister, brother, a child, anyone who wasn't affected by
3 the testimony has lost their heart. And I haven't lost mine,
4 and I know you haven't lost yours.

5 The Palestinian Authority and PLO condemned those
6 actions, and on their behalf I can tell you that that pain is
7 real. I am never going to pretend it's not.

8 Now, you want to do something for them. You are human
9 beings. You want to do something for them. If you didn't, I
10 want to do something for them. But it can't be done by finding
11 a wrong country or political organization liable. It just
12 can't be done.

13 So the best I can do on behalf of my client was to not
14 ask questions, to make clear that we don't stand for this, that
15 we don't tolerate this, and that it is wrong.

16 Obviously, from our standpoint there should not be
17 liability in this case, and I think that's what the evidence
18 requires. But if any of you disagree with me, I am just going
19 to rely on your judgment to not overstate, to evaluate
20 critically, to do that.

21 I am not abdicating my responsibility. I am not
22 trying to abdicate my responsibility on that issue. I am
23 saying to you, though, the PA and PLO condemn these for their
24 horrific nature, and I am going to ask you to return the right
25 verdict that it's not liable. And if any of you think

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Summation - Mr. Rochon

1 otherwise, I will regret that, but I ask you to use your best
2 judgment.

3 I want to talk about the Hebrew University.

4 I guess there is one other thing on this. I guess
5 plaintiffs' counsel can make arguments on that as well. I
6 would be shocked if he didn't. And there is an instruction the
7 judge is going to give you on sympathy here.

8 Do you mind pulling that up, Justin?

9 But in a case like this, we actually have an
10 instruction because it's so human. The judge will read you an
11 instruction that tries to help give you some guidance on that,
12 but consistent with your own common sense. It's pretty short.
13 I can read it.

14 So, under your oath as jurors, you are not to be
15 swayed by sympathy. You are to be guided solely by the
16 evidence in this case. And the crucial, hard-core question
17 that you must ask yourselves as you sift through the evidence
18 is: Have the plaintiffs proven their case by a preponderance
19 of the evidence?

20 The reason that's there is to remind you, as you think
21 about the sympathy, that the crucial, hard-core question you
22 must ask yourselves is what you have to deal with here. It is
23 for you alone to decide whether the plaintiffs have proven
24 their case solely on the evidence and subject to the law.

25 Then this last part is important: It must be clear to

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Summation - Mr. Rochon

1 you that once you let fear or prejudice or bias, or what is
2 most important here is sympathy, interfere with your thinking,
3 there is a risk that you will not arrive at a true and just
4 verdict.

5 We asked you to do hard work here. We asked you to
6 listen to the evidence, to want to hear that painful evidence,
7 and still to do right by the evidence, and that's what that
8 instruction is all about.

9 So with that, I would like to turn, if I could, to the
10 Hebrew University incident.

11 So the Hebrew University incident, as I said, is the
12 most despicable events you can imagine. This is a bomb in a
13 cafeteria, not a suicide attack, and all of the evidence in the
14 case is that it was done by Hamas. There is no dispute on
15 that, that Abdullah Barghouti was in Hamas. And Hamas is not,
16 to put it mildly, the PA or the PLO. Hamas is not even one of
17 the political parties in the PLO. And you heard the
18 testimony -- you probably know from your own background -- that
19 Hamas and my clients are at odds. And that was also the
20 testimony of General Faraj.

21 The plaintiffs' evidence on this is, again, you have
22 to look at it with critical eyes. So what did do they have?
23 They want to say that Abdullah Barghouti was picked up, and
24 there was some deal for him to get out, and that he was allowed
25 out and that he did this. And after he got out, that somebody

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Summation - Mr. Rochon

1 who worked for the PA let him stay in her apartment for a few
2 days. They will call it giving him shelter or something like
3 that, but the evidence is let him stay in an apartment for a
4 few days. That's their evidence.

5 What is the basis for their claim? Well, they say
6 Mosaab Hassan Yousef, that guy on the video, was there and saw
7 that this guy, they were trying to arrest him and they were
8 shooting and they had to make a deal to get him arrested. So
9 they have the arrest of Abdullah Barghouti.

10 Now, the arrest of Abdullah Barghouti is a sign that
11 the PA was trying to get him arrested even in the face of
12 gunfire. So having endured being shot at to get him under
13 arrest, the plaintiffs' theory is that they are going to let
14 him out.

15 There is also evidence from General Faraj that he
16 received a report of his escape. So there is conflicting
17 evidence.

18 The plaintiffs put in evidence from Abdullah
19 Barghouti, ironically, that he was released on August 27, 2001,
20 in one of his custodial statements. Actually, what he said he
21 was released the day some guy got killed, but yesterday
22 Shrenzel said he was killed August 27, 2001.

23 So on August 27, 2001, this guy was released. The
24 incident in question happened July 31, 2002, almost a year
25 later.

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Summation - Mr. Rochon

1 Now, in that period, this individual, the evidence
2 shows that you have, that hasn't been highlighted, was on the
3 run, using false identities, and escaping arrest by the
4 Israelis. I am going to show you some of that evidence to show
5 you how hard it was to apprehend this guy or keep him in. The
6 evidence will show you, their evidence, that the period of time
7 in which he was supposedly given shelter was at the end of
8 2001.

9 So the theory is, I guess, he gets out August 27,
10 2001, and at some point late 2001 this guy Ahmed Barghouti
11 let's him stay in a place.

12 Now, where is the evidence of a PA person at a
13 sufficient level to get him out?

14 They want to rely on Mosaab Hassan Yousef, the video
15 of this guy, who says that he is apparently sitting somewhere
16 and by coincidence here is this whole thing. Supposedly here
17 is Jabril Rajoub talking, in a perfect spot, he overhears this,
18 and he reports it. And you heard from Majed Faraj that this
19 guy was some Israeli spy, Mosaab Hassan Yousef. But he is also
20 said to be the son of a Hamas leader. So I don't know which he
21 was. Maybe he was both.

22 But his testimony or his deposition, I guess, is to
23 try to take or put some of the blame on the PA for something
24 clearly that Hamas did, this bombing. The guy whose place he
25 stayed, Ahmed Barghouti, is some low-level guy who was a

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Summation - Mr. Rochon

1 driver. Who was he a driver for? According to them, Marwan
2 Barghouti. Marwan Barghouti shows up again. Remember, Marwan
3 Barghouti is not a PA person. He is just a politician. So he
4 is his driver. He puts him up for a few days. That's their
5 case.

6 I would like to show you some of the various documents
7 that reflect some of the problems in the plaintiffs' case as to
8 the Hebrew University incident.

9 Justin, I bet you have those lined up if I know you.

10 First of all, on Hebrew University survivors, they
11 have got six people who were convicted. Five of them were not
12 PA people. The only PA person convicted in connection with the
13 Hebrew University incident is Ahmed Barghouti, this low-level
14 driver. And a driver cannot create the liability they are
15 trying to give us.

16 So this is the one where he says he got out, August
17 27, 2001. But just for a second, just realize, their source
18 for him being released as opposed to escape, Abdullah
19 Barghouti. That guy's word is good. You want to know some
20 facts about this case, go to Abdullah Barghouti, because he is
21 one good, solid, trustworthy, raise your right hand, you can
22 believe anything he says guy, as opposed to General Faraj, who
23 has not been convicted of killing 75 people, who is not a
24 member of Hamas, who has not destroyed families, and who has
25 come to court and has testified in front of you. But, no,

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Summation - Mr. Rochon

1 believe Abdullah Barghouti because he is such a good guy.

2 Next one, please.

3 Then this is regarding his transfer and it's on his
4 release. This is from Ahmed Barghouti. What it says: In late
5 2001, or thereafter, or thereabouts, that he gave shelter.

6 Then if you go to the next slide.

7 At the time set forth, which is late 2001, transferred
8 Abdullah Barghouti.

9 So, first of all, this allegation would be incorrect
10 with the notion that he got out on August 27 because that's not
11 late 2001. It's not even fall yet. Then he provided lodging
12 to him in the above-mentioned apartment for several days.

13 So this is either he got out August 27, like Abdullah
14 says, or late 2001, like Ahmed says, you don't know. And these
15 statements that are brought before you are just, what happens,
16 as you know, these guys are interviewed. You see on the back
17 Hebrew-language interviews and then translated into English of
18 interviews that you have no reason to believe were conducted in
19 Hebrew in the first place. And by guys who are currently under
20 interrogation for the terrible things they have done. The
21 quality of these statements as evidence is sometimes hard to
22 rely on as opposed to an actual witness on the stand telling
23 you about the report he received about the arrest.

24 But Ahmed says this and put him up for a few days.

25 So more Abdullah. You can either believe him or not.

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Summation - Mr. Rochon

1 In my view, on behalf of the defendants, you should not believe
2 one word Abdullah Barghouti has ever said in his live long
3 life, including the statements the plaintiffs want to rely on.
4 What in the world are we doing when these quadruple layers of
5 foreign-language interviews of some of the worst people in the
6 world are being brought in, presented to you in writing,
7 supposedly to establish my client's liability. Their evidence
8 of this guy's supposed release comes from principally the bad
9 guys.

10 But if you're going to look at Abdullah Barghouti's
11 statement, he says: That was in the period in which he trained
12 me in the preparation of explosive and explosive devices after
13 I left the Preventive Security prison. So that would be
14 Abdullah suggesting that his main training on explosives
15 happened after he got out, not before.

16 They like to say, as they did in opening and probably
17 will in closing, that letting him out was to let out Hamas's
18 big bomb maker. If you believe Abdullah, he got a significant
19 amount of his training after he got out, not before. I am not
20 saying you should believe this guy. But if you're going to
21 believe some of his stuff, you can't pick and choose just the
22 parts they like.

23 Here is his indictment. Now this guy Abdullah
24 Barghouti, you need to know what kind of slippery guy he is
25 because they want you to rely on his word. They want you to

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Summation - Mr. Rochon

1 find my client liable based on what Abdullah Barghouti said.
2 That is crazy when you think about it. A Hamas guy who killed
3 all those people. Hamas is antithetical to my client. But he
4 had a forged identity card bearing the name of blank when he
5 was examined by Israeli Defense Forces soldiers in Ramallah or
6 thereabouts with an intent to deceive them. That's one of the
7 things he got convicted of.

8 IDF had an observation post on the rooftop of the
9 house in which he lived.

10 They checked my identity card, and I gave them the
11 identity card in the name of Ashraf Allabad with my photograph.

12 So in this case, they want to hold us liable for the
13 guy having three days in an apartment with Ahmed Barghouti.
14 Meanwhile, he is fooling IDF people who are on the roof of his
15 house.

16 More about his identity card.

17 I told you I was wanted by Israel since the day of the
18 attack with the beer can, so I needed a forged identity card.

19 This guy is running amuck, fooling people, lying to
20 people. You can't rely on him. But if you do, you have got to
21 believe it all, I guess, because this is their main witness for
22 my client's liability, Abdullah Barghouti.

23 There were two instances where I was stopped for
24 checking by Israeli Defense Forces soldiers. I showed them the
25 identity card and they let me go.

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Summation - Mr. Rochon

1 If those had been Palestinian Authority police
2 officers that he said that about, what do you think he would
3 say? The Palestinian police authority had him and they let him
4 go. Hold the Palestinian Authority liable because they had him
5 and they let him go. But it wasn't the Palestinian Authority
6 that had him so we don't care about that.

7 Move on, please.

8 Then how did he do it? The explosives were purchased
9 by the defendant himself, that's Barghouti, and by his fellow
10 members of the Hamas organization. The above-mentioned
11 explosives were purchased by using Hamas money.

12 So the equipment he used to kill those people, Hamas.
13 The money, Hamas. Trained, according to him. There is not a
14 suggestion that he was trained by the PA.

15 Out running around with his fake ID fooling IDF
16 soldiers. But he is not going to fool you. You cannot hold
17 the PA and PLO liable for what Abdullah Barghouti did because
18 of what Abdullah Barghouti said.

19 See if there is another one, Justin.

20 THE COURT: Did you want to take a break, Mr. Rochon?

21 MR. ROCHON: That will be fine. I think I do have a
22 little bit more.

23 THE COURT: Ladies and gentlemen, don't discuss the
24 case. Keep an open mind until I finally give the case to you.

25 I am going to bring you back in promptly at noon.

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Summation - Mr. Rochon

1 (Jury exits courtroom)

2 THE COURT: Let's take a ten-minute break.

3 (Recess)

4 MR. YALOWITZ: I have a brief application.

5 First of all, Mr. Rochon asked the jurors to think in
6 their own lives what would happen if somebody came and gave
7 testimony that was biased. That's a violation of the golden
8 rule. I want him to either be sat down for violating that rule
9 or I want the leeway to make the same kinds of arguments to
10 this jury.

11 THE COURT: I am not sure what kind of argument you
12 want to make.

13 MR. YALOWITZ: If I say to this jury, think in your
14 own lives how you would feel, what would you do if this, I
15 think I am entitled to do that based on Mr. Rochon opening the
16 door.

17 THE COURT: You objected several times. I don't
18 remember you objecting to that.

19 MR. YALOWITZ: I don't think I objected at that
20 moment.

21 THE COURT: No, you didn't.

22 MR. YALOWITZ: The second problem I have is when he
23 was talking about the police magazines, he said these were the
24 best they could come up with. You and I know that he kept out
25 really, really powerful and direct incitement of violence under

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Summation - Mr. Rochon

1 403. And for him to say to the jury and leave the jury with
2 the misimpression that I scoured these magazines and this was
3 all there was is incorrect.

4 THE COURT: That's not the way I heard him say it nor
5 the way I interpreted it. I may have even interpreted it
6 incorrectly, but I interpreted it that you went through those
7 magazines and none of those magazines provided any evidence
8 with regard to these particular six incidents. That's what I
9 remember.

10 MR. YALOWITZ: He said that and I didn't have a
11 problem with that.

12 Then he went on to read from 175 and talk about the
13 substance of 175. Then he said this is the best they can come
14 up with. And that I have a problem with.

15 THE COURT: I don't remember a specific objection to
16 that.

17 MR. YALOWITZ: I did object to that.

18 THE COURT: To that particular statement?

19 MR. YALOWITZ: I did.

20 THE COURT: What do you want to do?

21 MR. YALOWITZ: I don't know how we cure it at this
22 point. Maybe we let in one example that's worse, like 201
23 which we have talked about quite a bit.

24 THE COURT: I am going to deny that application
25 because you're using two different definitions of worse. He is

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Summation - Mr. Rochon

1 talking about whether or not it is strong or weak evidence of
2 their participation in these events. You're talking about does
3 it show some more inflammatory statement. I think those are
4 two separate issues. I don't think he was commenting on that
5 issue.

6 MR. YALOWITZ: I understand that.

7 THE COURT: If you have other evidence in this case
8 that you believe is stronger evidence than that in the sense
9 that it points more directly to the PA's or PLO's involvement
10 in the terrorist acts at issue, then you can reference it in
11 summation. But that was not the way that I understood the
12 nature of the argument.

13 MR. YALOWITZ: I understand your ruling.

14 The third one, and this one I feel really strongly
15 about. He spent a long time trying to sow confusion about June
16 18 and 19 and one was a Hamas and one was an Al Aqsa Brigade
17 attack. I am sure you remember I wanted not to give to the
18 jury to take back, but I wanted to read to the jury that chart
19 in order to clear up which date was June 18 and which date was
20 June 19.

21 The defendants successfully kept that out. In my view
22 I think that was error. It might have been harmless error at
23 the time, but now that he has in closing suggested that the
24 June 18 attack is the attack which was the Al Aqsa attack and
25 the June 19 was the Hamas attack, we need to clear that up

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Summation - Mr. Rochon

1 other than simply by the testimony which we have. Because the
2 testimony is based on a very reliable source which we were not
3 allowed to put in evidence.

4 THE COURT: Well, that's not my recollection of how
5 that occurred. I don't have any recollection of my precluding
6 you from attempting to clear up that issue if you thought that
7 issue needed clarification.

8 My specific recollection of that issue, and I may be
9 confusing it with another, is you simply wanted to offer a
10 document into evidence in which no foundation had been laid to
11 offer that evidence. And then you said, oh, I don't want to
12 offer it in evidence, I just want to show it to the jury. My
13 position was consistent with the rule, that, no, you can't just
14 show stuff to the jury. Things that get before the jury are
15 things that are in evidence.

16 As a matter of fact, I have to back up as I am talking
17 because I am remembering now. You specifically said you did
18 not want to offer it into evidence. My recollection is you
19 just wanted to show it to the jury.

20 Now, if you want to go back to the transcript and find
21 that specifically and cite me to it. But, clearly, I have no
22 recollection, and I am sure that I did not say anything or rule
23 in any way that would have precluded you from offering either
24 testimony or admit into evidence any exhibits with regard to
25 that issue. I do not have any recollection, if that's what

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Summation - Mr. Rochon

1 you're saying, that somehow I limited your questioning on that
2 issue or I would not allow you to offer an admissible exhibit.

3 MR. YALOWITZ: I am not sure it's going to change your
4 views, but let me tell you what my recollection is. I don't
5 have the transcript handy, but I have a clear recollection
6 about it because we had a discussion about it.

7 I wanted to offer the information in that chart under
8 803(18), and under 803(18) it does not go back to the jury, it
9 does not go on the screen. It is read to the jury. So that
10 was my proffer. Not to send it back but to read it to the
11 jury. I know we had a discussion about that.

12 THE COURT: You wanted to do that under which rule?

13 MR. YALOWITZ: 803(18).

14 THE COURT: As what?

15 MR. YALOWITZ: As facts -- I forget the exact
16 phrasing.

17 MR. ROCHON: Learned treatise.

18 MR. YALOWITZ: Learned treatise. Periodicals, reports
19 or learned treatise on which an expert reasonably relies.

20 THE COURT: But that doesn't relieve you of the
21 obligation to lay that foundation. And you did not lay that
22 foundation. And I did not preclude you from doing so.

23 You didn't say you wanted to offer it at all. I will
24 look at the rule and you can cite to the transcript. But the
25 bottom line is, I don't think his argument has opened the door

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Summation - Mr. Rochon

1 to any further evidence, and I don't know what else you want me
2 to do other than you addressing that issue.

3 I can only assume, given the fact that that issue
4 arose, that both sides did what they thought was appropriate to
5 make clear about the dates. I don't think I restricted you in
6 any manner with regard to any testimony with regard to the
7 date, whether or not this was or wasn't the same incident. If
8 you want me to, I can look at the exhibit and look at the
9 transcript, but I am not sure that you proposed any remedy that
10 I would have considered to give you at this point in time,
11 other than you responding in whatever manner you think is
12 appropriate to his argument about what this evidence really
13 does show.

14 MR. YALOWITZ: Let me be very clear. I understand the
15 rule and I don't want to debate it. We can look at the
16 transcript. We can both look at the transcript at lunch. I
17 understand the ruling. I don't want to debate it.

18 The cure that I am proposing, and it may be that you
19 don't want to do it and we can just move on, the cure I am
20 proposing is for me to be allowed to reference and read from
21 that chart in closing. You can consider that and you may
22 conclude it's not a necessary remedy or appropriate remedy, but
23 you may think about --

24 THE COURT: I have to look back at the rule because
25 I'm not even sure you cited the rule appropriately. I don't

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Summation - Mr. Rochon

1 think the rule is that you can show things to the jury under
2 that rule even though they are not in evidence. I think it is
3 a rule of admissibility of evidence and if you want to
4 establish it, you have to follow the procedures and offer it in
5 evidence and admit it in evidence before it can be shown to the
6 jury.

7 I asked you whether you wanted to admit it in evidence
8 and you said no, is my recollection. You said, all I want to
9 do is read it, I don't want them to see the whole document.
10 Well, you can't do that.

11 MR. YALOWITZ: You and I are remembering the
12 conversation the same. So we don't have a disagreement about
13 the facts. You have to read the rule, reflect on my request.
14 If you deny my request, we will move on.

15 THE COURT: I can only give it further consideration
16 if you can cite me the transcript so I can look at the
17 transcript.

18 MR. YALOWITZ: We will give you a copy of the chart
19 and we will find a page of the transcript.

20 THE COURT: Mr. Rochon, how much more time do you
21 think you have?

22 MR. ROCHON: My estimates of time have been shown to
23 be sorely inadequate, as you predicted they would be. Having
24 said that, I think 20, 25 minutes tops. Before lunch.

25 THE COURT: Hopefully, by the time you finish I will

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Summation - Mr. Rochon

1 get a note that the lunch has arrived and we can send them in
2 and have lunch before we start with the plaintiffs' summation.

3 Let's get the jury.

4 MR. YALOWITZ: If it will help Mr. Rochon finish
5 faster, given the hour, I am not going to try to slip in and
6 start. If he only goes another ten minutes, that's fine.

7 THE COURT: I don't want to waste their time. Let's
8 just see when lunch arrives.

9 Let's get the jury, please.

10 (Jury present)

11 THE COURT: Mr. Rochon.

12 MR. ROCHON: Thank you, your Honor.

13 Ladies and gentlemen, good afternoon. Just to
14 alleviate any concerns, I am going to be finishing before
15 lunch, and that means it's going to be about 20, 25 minutes
16 maybe.

17 You probably have not wasted as much time as I have
18 watching ESPN. There is a show, a guy named Tony Kornheiser
19 and a guy named Michael Wilbon on Pardon the Interruption and
20 after they finish the show, at the end there is always a guy
21 who comes out to explain all of the mistakes they have made.

22 My colleague, I won't say which one, down at the end
23 has pointed out that I might have said in the Hebrew University
24 incident whether or not a PA person was convicted, and, in
25 fact, no PA person was convicted there. Ahmed Barghouti, his

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Summation - Mr. Rochon

1 conviction was only for allegedly sheltering Abdullah
2 Barghouti. So if I said that there was a PA person convicted
3 on that one, I was wrong. It wasn't the person at the end. It
4 was that guy right there.

5 So, ladies and gentlemen, the next incident and last
6 of the six is the Goldberg incident on January 29, 2004. I am
7 sure you remember the incident and the testimony very well.

8 As to that, ladies and gentlemen, it's also the case
9 that the person who did this was someone named Ali Ja'ara. And
10 as is the case with all of these incidents, there is either no
11 evidence of why the individuals did it or there is evidence of
12 motivations other than anything to do with the PA.

13 So, Justin, if you would go to the next slide.

14 In this one, the conviction of Hilmi Hamash, it says:
15 They heard that blank was looking for a person who was prepared
16 to commit suicide and introduced him to Ali Ja'ara from whom he
17 heard was having a bad life and was interested in carrying out
18 a suicide attack. So this guy had a bad life. In the files
19 you will see as to Wafa Idris problems in her personal life.
20 And in the Hashaika file you will hear there is retaliation for
21 something that happened.

22 The important point is that there is no evidence of
23 the motivations you need to further the PA's activities. There
24 is no evidence of this being something they did for those kinds
25 of reasons. What they did, they did for their own reasons.

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Summation - Mr. Rochon

1 Despicable, selfish, but not the PA's.

2 Furthermore, on the Goldberg incident, as to -- this
3 is the last one. It tells you again something we saw in one of
4 the other convictions. If you can go to the next slide.

5 This is the conviction of Hilmi Hamash. It says that
6 as to this guy Hamash, who knew prior to the commission of the
7 attack of the intent to execute it, that he also covered up for
8 the suicide terrorist at their joint workplace at the
9 Palestinian Authority.

10 As to this guy Ja'ara, the evidence is in fact that
11 Ja'ara had lost his job beforehand and so he was not a member
12 of the PA as of the date of the attack.

13 The point that I am trying to make to you is what does
14 the conviction of Hamash reflect?

15 If you go to the next slide.

16 It says: He not only did not sever himself from the
17 conspiracy, but could also have prevented the outcome of the
18 attack if he had reported the reason for the absence of Ali
19 Ja'ara from the morning parade to his commanders in the
20 Palestinian Authority.

21 Again, when you see this, you have to stop and think
22 for a second as to what do they mean. This is telling you that
23 in the eyes of the court that convicted Hilmi Hamash, he was
24 convicted because they knew if he had reported this to his
25 superiors at the Palestinian Authority, the act would not have

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Summation - Mr. Rochon

1 happened. It is very hard to conclude that the Palestinian
2 Authority is legally responsible for something that they would
3 have stopped if they had been made known of it.

4 The conviction of the Israeli court of this individual
5 shows that in the eyes of that military tribunal his commanders
6 in the Palestinian Authority would have stopped the attack if
7 Hamash had brought it to their attention. That is evidence
8 that is far more direct of what the PA's activities were, of
9 whether or not these things were within the scope of employment
10 and whether you can hold the PA liable.

11 It's similar to the other evidence I talked about
12 earlier in my closing argument that shows the same thing.

13 So, ladies and gentlemen, as to these six attacks, the
14 evidence I think, as I have discussed it with you, does not tie
15 the PA to them or the PLO to them.

16 I would like to discuss a couple of things with you
17 because I know Mr. Yalowitz after lunch is going to have the
18 opportunity to speak to you and I don't get to speak to you
19 again. The way this works, I go, he goes, the judge goes and
20 then you go.

21 I think I ended my opening statement by pointing out
22 that it's your voice, not mine or Mr. Yalowitz's, that matters
23 in the end. Your voice that eventually speaks as to what is
24 going to happen here.

25 As Mr. Yalowitz speaks, because I don't get to speak

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Summation - Mr. Rochon

1 again, I would like you to ask you to consider some things
2 because I know that there are things that they like in the
3 documents they want to talk about to try to undermine the
4 position of the PA. That's his job.

5 For instance, they want to point to statements in GIS
6 files that say someone was of good morals. The statements and
7 forms about promotions and so on. They want to take the
8 bureaucratic forms and try to use them to suggest, as you think
9 about it, bad things about the PA, but when you analyze it
10 carefully, that don't go to the attacks at issue. Because what
11 is said about these people in the file don't show why they did
12 what they did or how they did what they did.

13 the evidence as to why these people write these things
14 in their files as to their status, it's clear that these
15 individuals, who are incarcerated and they are being evaluated
16 by the intelligence service, they are evaluating them from the
17 standpoint of an intelligence service. And as to a
18 intelligence service, it makes sense that they would look at
19 whether or not they could be subject to influence by a third
20 party.

21 MR. YALOWITZ: Objection. Not in evidence.

22 THE COURT: Overruled. I already indicated to the
23 jury what the lawyers say is not evidence.

24 MR. ROCHON: As to the statements written by
25 bureaucrats in files, in connection with some large

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Summation - Mr. Rochon

1 bureaucratic operation to pay benefits that are established
2 policy of the PA and PLO, a statement made by some individual
3 as to the conduct or their actions cannot after the fact create
4 liability on the PA for what they did.

5 The issue in this trial should not be that kind of
6 generic statements in files. It should be, is there evidence
7 that ties the PA or the PLO to these specific attacks? As he
8 argues and as he says bad things about my clients, I would ask
9 you to ask yourself how did that relate to this incident, that
10 incident, that incident. Because that is what we are here to
11 do, ladies and gentlemen.

12 The court has prepared for you a verdict form and I
13 would just like to put up for a second. If you can start with
14 the first count.

15 So the court has a verdict form and on the screen you
16 see the January 22, 2002 shooting. And as to each of the
17 incidents the plaintiffs will offer you their view as to the
18 evidence. They may offer their view as to whatever damages
19 they claim. But the court is going to give you the theories
20 that are available for each of the incidents.

21 As to this first one, the January 22nd, the one
22 involving Said Ramadan, the first question is whether the PLO
23 knowingly provided material support or resources. As I have
24 discussed with you, the evidence of the PLO doing so is nil.

25 Then they will ask if the PA is liable for the same,

F2J8SOK3

Summation - Mr. Rochon

1 and the same analysis.

2 As for the responsibility of any of their employees,
3 remember the first instruction, the short one I read to you
4 that applies to the scope of employment as well as material
5 support that requires it to involve the actions of an official
6 at a higher level.

7 Then the second incident is the January 27, 2002 Jaffa
8 Road incident. Again, ladies and gentlemen, it's the same
9 three questions. I won't repeat each of them for you. But
10 it's the same three questions.

11 When it comes to the third question about scope of
12 employment, where they try to rely on the act of a PA employee,
13 note you can only find liability if that person was acting
14 within the scope of his employment and in furtherance of the
15 activities of the PA. And you know from this evidence that
16 these individuals, employees may they be, did not do so.

17 If you go to the third incident, the King George
18 Street bombing, again, this is the one that we talked about
19 involving Hashaika. Again, it's the same three questions and
20 it's the same three answers.

21 Then when we get to the June 19 incident, that's the
22 French Hill one, the Mandelkorn incident. You will see that
23 you're asked an additional question because there is an issue
24 in this case that involves -- this is after the Al Aqsa Martyrs
25 Brigades had been designated as an FTO by the United States.

F2J8SOK3

Summation - Mr. Rochon

1 So the questions are slightly different, but the answers are
2 the same. Because the evidence in that one, over all of them
3 maybe, shows not only no involvement here, it is absolutely
4 unclear of any -- they are simply a non-PA person who did it.
5 And if he did it -- maybe they have the date wrong and they
6 can't even say when it happened.

7 MR. YALOWITZ: Objection.

8 THE COURT: Overruled.

9 MR. ROCHON: Then if you go to Hebrew University
10 bombing, you can get more questions. On the Hebrew University,
11 that's the first page.

12 If you go to the next page, Justin.

13 You will see on that one you have seven questions.
14 The fact that you have seven questions does not mean there is
15 more evidence. It's just a matter of where the law requires
16 more answers to questions. But if you look at them -- go to
17 the prior page -- as to the first question: Did the PLO
18 provide material support? That's the Hamas incident where
19 there is no evidence of the PLO providing anything.

20 Is the PA liable for providing material support? The
21 only theory they have is, I guess, Ahmed Barghouti letting him
22 stay in an apartment for a few days, or their theory will be
23 that they let him out, even though the evidence is conflicting
24 on that and their main source for it is Abdullah Barghouti. In
25 any event, whoever let him out certainly was not acting within

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Summation - Mr. Rochon

1 the scope of their employment or the authority of the PA.

2 Number three talks about whether an employee of the
3 PA, acting within the scope of their employment in furtherance,
4 provided material support or resources in reparation. Now they
5 are focusing on an employee of the PA. No PA employee
6 convicted in that incident. The only possible connection that
7 Barghouti got convicted for letting this guy stay in the
8 apartment for three days, almost seven or eight months before
9 the incident occurred.

10 Then if you go to the next page, this gets more
11 complicated because you have these Hamas issues. So the
12 question is, because Hamas was a foreign terrorist
13 organization, whether either the PLO or the PA provided
14 assistance to Hamas. So that's what those are.

15 But as to each of these, the question, did they give
16 something to Hamas? No. It has to relate to the attack. In
17 each of these, ladies and gentlemen, the evidence must tie to
18 an attack, not just having something to do with Hamas.

19 Then the last two the plaintiffs have: Did someone
20 from the PLO harbor or conceal a person who the PLO knew or had
21 reasonable grounds to believe. Well, there is zero. I guess
22 this relates to, in theory, the apartment this guy stayed in,
23 but there is no PLO hold there, or letting him out, there is no
24 PLO hold there.

25 Then the same question as to the PA supposedly,

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Summation - Mr. Rochon

1 harboring or concealing a person that the PA knew or had
2 reasonable grounds to believe committed or was about to commit
3 this attack. Notice that each of these questions, each of the
4 questions formulated by the court in the verdict form has the
5 words at the end "this attack."

6 You go through your verdict form when you go back to
7 deliberate and you will see every single question ends with the
8 words "this attack." That's because we are not here to make
9 general decisions about did the PA do something good or bad.
10 It's just like I said in the beginning of my closing, it is
11 about these six incidents.

12 Justin, just for clarity, if we go to the last one.

13 That again, ladies and gentlemen, this one has a total
14 of five questions. It follows sort of the same pattern except
15 there are no Hamas issues here. I won't go through each one of
16 them with you except to say that the analysis on each of these
17 is that the evidence must relate to the particular attack, and
18 there is a shortfall there.

19 So that's why I ask you when you hear plaintiffs'
20 counsel talk in his closing, make sure he is not trying to
21 convince you based on some general bad feeling about my client,
22 a dislike for its policies. It's got to relate to these
23 attacks individually.

24 Finally, ladies and gentlemen, as far as the law,
25 there is an instruction on respondeat superior that the judge

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Summation - Mr. Rochon

1 will give you.

2 So this is the instruction that goes to when you can
3 hold an entity liable for what its employees do. Because your
4 common sense tells you that you can't just say because someone
5 was employed somewhere that the company they work for is liable
6 for everything they do.

7 So what this tells you is that an employer is
8 responsible for the acts of the employee if it's in furtherance
9 of the activities of the employer, and is within the scope of
10 the employee's authority.

11 The instruction goes on to say about the factors that
12 you can consider. That's towards the bottom. The judge will
13 give you guidance as to when you can determine an employee is
14 acting within the furtherance of the PA activities and within
15 the scope of his authority. Understand, this has nothing to do
16 with the PLO. This is an instruction only as to the PA.

17 Here is what you can consider. You may include, the
18 connection between the time place and occasion for the act. So
19 none of these employees were engaged in any of these alleged
20 acts. There is no evidence while they were working, in the
21 place where they worked. It wasn't part of their duties. The
22 activities occurred outside where the PA even operated. And
23 there is no evidence of using anything from the PA to do it.
24 These are just employees on their own doing things.

25 You talk about the history and relationship between

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Summation - Mr. Rochon

1 the PA and its employees spelled out in actual practice. And
2 there, while the plaintiffs want to talk generally about the PA
3 and say bad things about the PA, as to these acts and these
4 employees is where the evidence falls short. So they don't
5 talk about that often.

6 The extent from normal methods of performance and
7 whether the specific act was one that the PA could reasonably
8 have anticipated. And here you have evidence these people were
9 hiding this from the PA. And clearly not within the scope of
10 their PA activities.

11 (Continued on next page)

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F2JTSOK4

Summation - Mr. Rochon

1 MR. ROCHON: So if you find that employee caused
2 injury while acting within the scope of his authority and in
3 furtherance of the PA's activities, then the PA is legally
4 responsible.

5 Now the instruction does say that -- Mr. Yalowitz will
6 undoubtedly talk about this language -- even though you find
7 that the PA as the employer specifically instructed the
8 employee not to perform the bombings or shootings that are at
9 issue, if you find it was done in furtherance of the employer's
10 activities and was reasonably foreseeable, you may find it was
11 within the scope of the authority.

12 But then the instruction concludes on the next page,
13 it is not sufficient that the employee was simply engaged in
14 the employer's service at the time of the incident giving rise
15 to the action. And I have been telling you that since we first
16 met six weeks ago. The test is whether the employee's act was
17 in furtherance of the activities and was incident to the
18 performance of duties entrusted to the employee. These acts
19 were not incident to the performance of duties entrusted to the
20 employees.

21 Ladies and gentlemen, the instruction on whether you
22 can hold an entity liable for what its employees do will give
23 you clear guidance that the PA cannot be held liable for what
24 the employees did on their own.

25 So ladies and gentlemen, thank you so much. You have

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Summation - Mr. Rochon

1 been a wonderful jury to be in front of. I know at times you
2 may feel we used a lot of time and maybe we it could have been
3 done more briefly. I like to the blame the other side for
4 that, I know they want to blame me. It doesn't matter. I know
5 that you will carry out your duties in the highest possible
6 manner, and I know that when you speak at the end of all your
7 deliberations that you will follow the judge's instructions,
8 you will consider evidence, and you will do something that is
9 hard. Because the temptation is to help the people is there,
10 but the evidence doesn't support holding the PA or PLO
11 responsible for what the bad guys did, and holding them
12 responsible when the evidence doesn't support it would be the
13 wrong thing.

14 I ask, as you think about your verdict, to think about
15 how you will feel about it --

16 MR. YALOWITZ: Objection.

17 MR. ROCHON: -- in ten years looking back at this
18 case.

19 THE COURT: Overruled.

20 MR. ROCHON: Once the dust clears, once the evidence
21 is closed, once you think about it, think about how you would
22 feel about it if, on this evidence, the PA or the PLO was held
23 liable for things that the evidence shows they should not be
24 held responsible for what others did.

25 When you think about that and you think about the

F2JTSOK4

Summation - Mr. Rochon

1 evidence in this case, it is such a challenge that I am glad we
2 took such time to choose you, and I'm glad you took such time
3 to serve here. And I thank you in advance for your service,
4 your verdict, and the voice with which you will speak at the
5 end of this case that the PA and PLO are not liable for what
6 happened here. Thank you so much.

7 THE COURT: Ladies and gentlemen, this is what we're
8 going to do, I ordered your lunch for 12:30, so I'm hopeful
9 it's here or close to arrival. So we'll take a break. I will
10 give you a shorter lunch break and have you eat in the jury
11 room so we can come back quickly and continue with the
12 summation, the summation for the plaintiffs.

13 What I'm going to say -- I will plan on bringing you
14 out at 1:20. So hopefully your lunch is here. If your lunch
15 is little delayed I may give you a little more time to eat
16 lunch, but hopefully within that time we could be prepared to
17 continue and get the other summation in, and I will instruct
18 you on the law and maybe have an opportunity to have you begin
19 your deliberations sometime this afternoon.

20 So don't discuss the case, keep an open mind until I
21 finally give the case to you. I will see you at 1:20.

22 (Jury not present)

23 THE COURT: Are we prepared to have lunch? Have a
24 quick lunch and we'll start back up at 1:20 with your
25 summations.

F2JTSOK4

1 MR. YALOWITZ: That's great, your Honor. Just for
2 your convenience, if you're still reflecting on that
3 conversation we had, we're looking for the page of the
4 transcript, but I will give you the chart. And what I was
5 talking about is entries 59 and 60, and you can look at them
6 and reflect on it, and we have had -- we don't need to discuss
7 it any further unless you have questions.

8 THE COURT: If you find the transcript page, why don't
9 you call chambers and just give us that over lunch, and I will
10 take a quick look at that time.

11 MR. YALOWITZ: And I know you know the rule.

12 (Luncheon recess taken)

13 (Continued on next page)

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1 AFTERNOON SESSION

2 (1:20 p.m.)

3 (Jury not present)

4 THE COURT: Mr. Yalowitz, are you ready for your
5 summation?

6 MR. YALOWITZ: Yes, sir, I hope to be.

7 THE COURT: Then let's get the jury.

8 MR. YALOWITZ: Did you want to address the issue
9 further?

10 THE COURT: No, at this point you can respond based on
11 the evidence. But I still have it. I'm looking at it. I want
12 to go back to the transcript to orient myself, but don't think
13 my position is different.

14 MR. YALOWITZ: I wanted to make sure you were aware of
15 it.

16 THE COURT: Thank you.

17 MR. YALOWITZ: Your Honor, may I provide copies of the
18 index cards to leave them on the seats for the jury before they
19 come in?

20 MR. ROCHON: If he wants to leave it on the seats, I
21 have no problem with that.

22 MR. YALOWITZ: I think that he doesn't want me handing
23 things to the jury during closing.

24 THE COURT: Just give it to my clerk.

25 MR. ROCHON: Judge, I can see counsel is going to use

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Summation - Mr. Yalowitz

1 some slides, and obviously he can present his closing as he
2 sees fit. I only used evidence, not any slides.

3 THE COURT: I assume that's what they will use, too.

4 MR. YALOWITZ: No, I have some commentary, but it's
5 very light. It's not anything I wouldn't be saying,
6 commenting.

7 MR. ROCHON: I haven't seen them. If I need to
8 object, I will, but it's not like I have seen them before, if I
9 do object.

10 THE COURT: Hopefully it won't be anything of issue.

11 MR. YALOWITZ: I don't have anything planned that I
12 expect to draw an objection.

13 THE COURT: That's always useful.

14 Then let's get the jury in. How long do you estimate
15 at this point, Mr. Yalowitz?

16 MR. YALOWITZ: Two to three hours. And if you would
17 like a break -- well, I think we should break.

18 THE COURT: If you want a break tell me. About an
19 hour, hour and a half.

20 MR. YALOWITZ: Okay.

21 (Jury present)

22 THE COURT: Mr. Yalowitz.

23 MR. YALOWITZ: Thank you, your Honor.

24 Ladies and gentlemen, thank you. Thank you for your
25 service in this case. There are four things that our country

F2JTSOK4

Summation - Mr. Yalowitz

1 can ask us to do. Ask to us pay our taxes. We have do that.
2 Our country asks us to vote. We don't have to do that, but we
3 should do that. Our country can ask us to serve in the
4 military. We have no choice about that, and there are those
5 who serve with honor. And our country can ask us to serve on a
6 jury, and that is what our country asked of you. And ladies
7 and gentlemen, you have served exemplary service on this jury.
8 I think that may be the only thing that the plaintiffs and the
9 defendants will agree on in these closings, but I will tell you
10 on behalf of my families who came here seeking justice, we
11 thank you.

12 This case is about ten American families who were
13 going about their ordinary lives until one day when everything
14 changed. Shmuel Waldman and Shayna Gould were teenage kids, 19
15 and 20 years old, waiting on a bus. Shmuel and his wife Henna
16 are here in the courtroom. Shayna and her sister Jessica are
17 here in the courtroom.

18 The Sokolow family were buying a pair of shoes for
19 their twelve year old. Mark and Rena are here today.

20 Alan Bauer was walking home from work holding the hand
21 of his seven year old child. Alan has come back from Jerusalem
22 to be here today.

23 Rabbi Mandelkorn was waiting at home for his boy to
24 return from a school trip by bus when he got the call that
25 nothing would ever be the same in his life. The rabbi is here

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Summation - Mr. Yalowitz

1 today.

2 Diane Carter, Janice Coulter, Ben Blutstein, David
3 Gritz, they were having lunch in a university cafeteria. Their
4 lives were ended that day because they choose to eat lunch.
5 Diane Coulter Miller is here today to stand up for her sister,
6 and Larry Carter is here to stand up for his daughter.

7 And Scotty Goldberg was riding a bus to work. At 20
8 minutes to nine he was on the phone with his wife, and eight
9 minutes later he was dead. His wife and his daughter Esther,
10 Karen and Esther are here today to stand up for their husband
11 and their father.

12 We have been together all these weeks in this
13 courtroom because the plaintiffs are citizens of the United
14 States of America. Judge Daniels will instruct you on the law,
15 and here is some of what he is going to tell you about the
16 Anti-Terrorism Act. The Anti-Terrorism Act provides a remedy
17 for U.S. citizens who suffered injury by reason of an act of
18 international terrorism.

19 In other words, the Anti-Terrorism Act allows citizens
20 of the United States who have been injured by terrorism
21 anywhere in the world to come to court in the United States and
22 hold the perpetrators accountable in a court of law. In fact,
23 later today Judge Daniels will tell you that in order for it to
24 be international terrorism, it has to take place outside or
25 primarily outside the jurisdiction of the United States.

F2JTSOK4

Summation - Mr. Yalowitz

1 This was a law that was passed by the United States
2 Congress and signed by President Bill Clinton for the purpose
3 of fighting terror by protecting our fellow American citizens
4 wherever they go in the world. Wherever a citizen of the
5 United States travels, this law travels with us. And it does
6 another important thing, it hits those who send terrorists
7 where it hurts them most, in the wallet. Money is oxygen for
8 terrorism. Take away their money by making them pay their fair
9 share of what they did.

10 Now for you to award these families the damages that
11 you believe they deserve, I need to walk you through the
12 liability case and the verdict sheet that Judge Daniels is
13 going to give you later today. Filling out this verdict sheet
14 correctly is important, because it will give you the power to
15 award the damages that these families deserve.

16 Now you heard the defendants talking about no
17 conclusive evidence. The defendants' lawyer even put a slide
18 from the U.S. State Department saying there was no conclusive
19 evidence of PA and PLO senior official involvement in 2002.

20 Well, first of all, we're going to see evidence that
21 developed that did find those senior officials liable. It's in
22 the binders, and you're going to be able to look at that. But
23 second of all, the defendants' lawyer misstated the burden of
24 proof. These families don't have to come here and give you
25 conclusive evidence, what they have to do is give you a

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Summation - Mr. Yalowitz

1 preponderance of the evidence, which is like a scale of
2 justice. If the scale tips even a little bit in favor of the
3 plaintiffs then I have carried my burden. And remember, we
4 brought you a lot of evidence here, and I will take you through
5 it. It's not a conclusive evidence standard.

6 MR. ROCHON: Objection, your Honor.

7 THE COURT: Overruled.

8 MR. YALOWITZ: Now I also want to talk to you a little
9 bit about the different ways that you can find the PA and the
10 PLO liable. There are two ways that we can go here. The first
11 is material support, and the second is scope of employment.
12 We're going to talk about both of those.

13 And you heard the lawyer for the defendants refer to
14 the introductory language that Judge Daniels is going to talk
15 about, which is that in order to prove that a defendant is
16 liable for a particular claim under the ATA, the plaintiffs
17 must demonstrate the involvement of a senior official or other
18 person having duties of such responsibility that his or her
19 conduct may fairly be considered to represent the PLO or the
20 PA.

21 That's not complicated. It may sound kind of
22 lawyer-like, but think about who fairly represents any entity.
23 If you're a beat cop walking the street, you fairly represent
24 the NYPD. If you're a customer service rep and somebody calls
25 you at your place of work and asks you how to do something or

F2JTSOK4

Summation - Mr. Yalowitz

1 how to solve a problem for them, you fairly represent your
2 employer. You don't have to be a senior top official to fairly
3 be considered to represent the entity.

4 Now material support is a really broad term. Material
5 support means property -- any property or other service. It
6 includes money, it includes personnel, it includes safe houses,
7 it includes explosives, it includes lodging and weapons and
8 lethal substances and transportation and training and other
9 things. And we're going to go through the evidence today of
10 material support.

11 We're also going to talk about two different kinds of
12 material support. One is for the particular terror act, like
13 Ahmed Barghouti taking the bomb maker to safe house. And the
14 other is a more general type of support, creating a policy in
15 which you give money to people, providing money to a terror
16 organization. And Judge Daniels is going to instruct you on
17 this topic, too. He's going to say you need not find that a
18 person for whose conduct a defendant is liable intended that a
19 specific crime or terror attack be carried out. Giving
20 material support to a known terror organization is not legal.
21 It's not okay. You can't do that.

22 Now we have been talking about policies pretty much
23 the whole time. When you have a policy in which you say to
24 your employees if you commit a terrorist act we will fire you,
25 that says something about who you are and what you believe in.

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Summation - Mr. Yalowitz

1 And if you say -- if you have a policy in which you say to your
2 employees if you commit a terrorist act we're going to keep you
3 on the payroll, even if you're in jail, and we're going to take
4 care of your family and we're going to give you promotions, and
5 when we write our records about it we're going to say as a
6 matter of course you're doing this as a result of your fight
7 for your country and you're good in terms of security and
8 morals, that says something else about what you want your
9 employees to do. And if you have that well-established policy
10 and they do it, you're providing material support to them, just
11 like if you hire somebody to do a job and they don't do it
12 until after -- then they do it and then you pay them after, you
13 have provided material support to them. You have paid them for
14 the job even if you pay them after.

15 When you have a policy, well known and well
16 established, in which you say even if you're not an employee,
17 if you go to jail because you committed a terrorist act and
18 killed or injured civilians, we'll put you on the payroll, that
19 says something about who you are and what you believe in. And
20 it's proving support to people even if it's after the fact,
21 even if you pay them after the fact. If it's a well-known
22 policy and then they do it and then you pay them, you provided
23 support.

24 The same with these martyr payments. If you have a
25 well-established policy, we're going to take care of your

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Summation - Mr. Yalowitz

1 family, and then they do it and you take care of the family,
2 you are providing material support. And it doesn't matter if
3 you're a hundred percent of the motive or one percent of the
4 motive, you just can't do that.

5 Now I also want to give you a little bit of overview
6 of the road map of where we're going to go not only on material
7 support but on scope of employment. That's a legal word, but
8 it's also going to be easy once we go through the factors that
9 Judge Daniels is going to give you.

10 The question is were these employees who did it --
11 there's no dispute about that fact, they did it -- were these
12 employees acting in a way their employer should be held
13 responsible for? By virtue of their job, was it a person
14 having the kind of responsibilities that their conduct could be
15 reasonably anticipated in light of the facts and circumstances?
16 Were they acting in furtherance of the PA's activities?

17 Now I want you to think about something from our lives
18 that might be applicable. If you have an NYPD cop and he goes
19 over to New Jersey and he kills somebody and the NYPD fires
20 him, that's what you would expect. But if you have an NYPD cop
21 who goes over to New Jersey and kills somebody and the NYPD
22 says good job, you're good in terms of security and morals, you
23 were doing that as a result of your fight for New York and
24 we're going to keep you on the payroll and give you promotions
25 while you're in jail, that says something else about that. And

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Summation - Mr. Yalowitz

1 when you have not one guy, not ten guys, not 50 guys, but when
2 you have hundreds of guys who do that, then you begin to see a
3 pattern, and the pattern is this is the regularly conducted
4 activities of the PA.

5 Now I want to start with these employment policies,
6 because the very biggest kind of material support you can give
7 to terrorism is money and personnel. And these guys gave both
8 in the form of all of those Al Aqsa Martyrs Brigades security
9 officers. And we saw over and over again in the PA's own
10 payroll records and in the PA's own promotion records, that
11 they were paying and promoting people that they knew that they
12 knew had committed terror acts?

13 MR. ROCHON: Objection, your Honor.

14 THE COURT: Overruled.

15 MR. YALOWITZ: And in 2013 they even passed a law
16 saying that policy is going to be locked in as a matter of law.
17 The state shall continue to pay the salary of an imprisoned
18 employee. That's how common it was. It's so common that their
19 employees go to prison that they have to pass a law to reassure
20 the employees that it's okay. And it's not just their
21 employees, it's also the PA prisoner log.

22 Now in any government what the law says reflects the
23 government's values. As I said, we have been together since
24 January 7 because our country has passed a law protecting
25 Americans from acts of international terrorism.

F2JTSOK4

Summation - Mr. Yalowitz

1 And the PA has laws, too. And we spent a long time
2 looking at that prisoners' log. This is the one that defines
3 prisoner as anyone who participates in that struggle against
4 the occupation. This is the law that has that matrix of
5 payments that says come on, we'll put you on the payroll when
6 you commit a crime, and the longer you're in jail the more
7 money we will pay you. And you don't have to do anything, you
8 have to perform no service at all once you have committed your
9 terrorist act.

10 Now the PA brought a guy in, Faraj, or Issa, to claim
11 they're just following Israel's lists, that they have no
12 control over who they pay. But you and I know that's not true.
13 Even Michael Sfard came in and said to you it would be really
14 easy to separate out the one percent of murderers or the five
15 percent of murder and attempted murder. It wouldn't be hard to
16 do. If you don't want to pay murderers, you don't have to, and
17 you can't sit there in a court of law and say oh, I'm helpless,
18 sorry, I can't pay.

19 Now this prisoner law and this prisoner institute
20 started in the PA and then it moved to the PLO. Today that
21 prisoner institute is in the PLO, and today the PLO is making
22 those payments.

23 Now the martyr foundation also has a policy. They pay
24 terrorist families every single month because these people blew
25 themselves up and killed civilians. And again, it may be that

F2JTSOK4

Summation - Mr. Yalowitz

1 they want to provide payments to other people who are injured,
2 but you don't have to pay terrorists if you don't want to. And
3 what we saw in this case, we had five terrorists who killed
4 themselves, and all five got paid because they died committing
5 a terrorist act. And the payments are not tied to need, and
6 there's nothing that requires them to pay suicide terrorists.
7 And if you set up a program in which you say if you commit a
8 terrorist act we will pay your family, that is providing
9 material support, and you can't do that.

10 Now you'll notice that your verdict sheet has separate
11 questions for the PA and the PLO. The PA and the PLO want you
12 to believe that they're separate in this court. But what is
13 does the evidence show about separation? First of all, look at
14 the payroll records and the military records. We saw that they
15 had both headings over and over and over and over and over
16 again. Their own records don't make a distinction between the
17 PA and the PLO. Even Jabril Rajoub has on his business card
18 that he's the security adviser under both organizations.

19 So when you think about who is providing that material
20 support by keeping terrorists on the payroll and giving them
21 promotions, it's both. When you think about the martyr
22 institute, that's an institute that was in the PLO, they moved
23 it back to the PA, they moved it back to the PLO, the prisoners
24 gets moved back and forth. We asked Hanan Ashrawi about that.
25 She came and testified, she was a very nice lady who was all in

F2JTSOK4

Summation - Mr. Yalowitz

1 favor of peace, and said how do you move these ministries back
2 and forth? She said well, it's a presidential decision. So
3 that's how easy it is for them to move it back and forth.

4 And speaking of presidential decisions, let's not
5 forget who was the president of the PLO -- sorry, the chairman
6 of the PLO, the president of the PA, the minister of the
7 interior, the head of security, the chairman of Fatah, this was
8 Yasser Arafat. He had all of those responsibilities. And an
9 entity can't act on its own. An entity can only act through
10 its agents and employees. That's the only two ways that an
11 entity can act. So when the PLO does something, the only
12 people who can answer for it are people like Yasser Arafat or
13 people under his command or agency.

14 Now agency isn't a complicated concept. If I ask you
15 to -- if I tell you to go to my kitchen, take money out of my
16 cookie jar and buy me a Big Mac, you're my agent. If I tell
17 you go take this bomb, go across the street and blow it up,
18 you're my agent if you go do that.

19 So when Arafat told people to go give money to this
20 terrorist or give money to that terrorist --

21 MR. ROCHON: Objection.

22 THE COURT: Overruled.

23 MR. YALOWITZ: -- they're his agents. They're acting
24 under his supervision.

25 Now there's really no doubt from the evidence you saw

F2JTSOK4

Summation - Mr. Yalowitz

1 that Arafat controlled the money. That was the testimony of
2 Hussein Al-Sheikh. As president and prime minister of the
3 Palestinian Authority between 2000 and 2004, did Yasser Arafat
4 have any authority over expenditures of the Palestinian
5 Authority?

6 Answer: Of course, he was the president.

7 Salam Fayyad even said that the PLO didn't have its
8 own independent money. He said after the PA came into being,
9 the PLO ceased to have its own independent sources of funding
10 largely. Funding for its own operations did come from the PA.

11 Now that is pretty simple. Those policies, those
12 policies are enough for you to check yes on those boxes about
13 material support. Anytime that there's a terrorist who is kept
14 on the payroll, that's material support, and you can check yes.
15 Anytime there's a terrorist who is brought on the payroll,
16 that's a material support, and you can check yes.

17 MR. ROCHON: Objection, your Honor.

18 THE COURT: Overruled. I will give the jury
19 instructions on the law.

20 MR. YALOWITZ: Anytime that there's martyr payments,
21 you can check yes. You don't have to find that those payments
22 preceded the attack. Anybody ever paid a bill after they got
23 the services or after they got the goods?

24 Now there's also another kind of material support
25 here, which is material support of a known terror organization.

F2JTSOK4

Summation - Mr. Yalowitz

1 And the evidence on this is undisputed. There's no dispute
2 that it was common knowledge in the West Bank and in the Gaza
3 strip in 2001 and 2002 and forward that Al Aqsa Martyrs
4 Brigades was committing terrorist acts. There's no dispute
5 that it was common knowledge in that place and in that time
6 that Hamas was committing terrorist attacks. And there's a
7 mountain of evidence that the PLO and the PA supported those
8 terrorist organizations. And the dots are pretty easy to
9 connect here, and they all run through Yasser Arafat.

10 Ask yourselves three questions about the five Al Aqsa
11 attacks: First was it an Al Aqsa attack? None of that is
12 disputed. Every single one of these attacks was an Al Aqsa
13 attack.

14 Second, Al Aqsa Martyrs Brigades is the armed wing of
15 Fatah. We heard evidence on that from the plaintiffs, and the
16 defendants stood mute.

17 Number three, Arafat and his subordinates -- sorry,
18 Arafat and his agents knowingly gave material support and
19 resources to Fatah/AAMB operatives. A mountain of evidence on
20 that.

21 Let's take a look. First of all, how do we know that
22 these were Al Aqsa Martyrs Brigades attacks? We all remember
23 the testimony of Shrenzel, and we went through the evidence,
24 and then we went through his conclusions. And other than the
25 Hamas attack, he was very clear that these were Al Aqsa Martyrs

F2JTSOK4

Summation - Mr. Yalowitz

1 Brigades attacks.

2 Now in closing, the defendants' lawyers have
3 challenged some of the evidence on one of those attacks, and I
4 would like to read you what happened during the trial of this.

5 This is from the testimony of Israel Shrenzel.

6 "Q. Looking at the second bullet, it says he was murdered on
7 June 18 while executing the Jerusalem martyrdom operation. Do
8 you see that?

9 "A. I do."

10 And remember, the file shows it was an Al Aqsa attack.
11 And I said:

12 "Q. Have you had the opportunity to evaluate whether the
13 attack took place on June 18 or June 19?

14 "A. The attack that we are dealing with took place on the 19th
15 of June. Unfortunately this reflects how successive the
16 attacks were.

17 "Mr. Rochon: Objection.

18 "The Court: Sustained. What is your question?

19 "Q. Have you satisfied yourself that the attack of Said Awada
20 took place on June 19?

21 "A. Absolutely.

22 "Q. And are you satisfied that the attack was an Al Aqsa
23 attack?

24 "Mr. Rochon: Objection.

25 "The Court: Overrule. You can cross-examine.

F2JTSOK4

Summation - Mr. Yalowitz

1 "A. Absolutely."

2 Now there was no cross-examination on that topic.
3 There was no cross-examination at all because -- well, I don't
4 know why they didn't cross-examine. They chose not to, and now
5 they have to live with that consequence.

6 Now how do we know that Al Aqsa Martyrs Brigades is
7 the armed wing of Fatah? It's really simple. Their own web
8 site says it. This is a PLO web site, although it's got that
9 PA logo, but it's a PLO web site from the U.K. in Arabic. We
10 translated it for you.

11 Al Aqsa Martyrs Brigades, this is the military wing of
12 the Fatah movement. It started its activities at the beginning
13 of the Second Palestinian Intifada. It carried out a number of
14 quality military operations and offered many martyrs.

15 This is the defendant's own words. It's not mine.
16 Did they bring their employees who wrote this to try to explain
17 it away? They did not.

18 MR. ROCHON: Objection, your Honor.

19 THE COURT: Overruled.

20 MR. YALOWITZ: This is their own web site. Look they
21 document from Said Ramadan. On page one, the intelligence
22 service said this was a Fatah operation, and on page two they
23 said he carried out a martyrdom operation on behalf of the Al
24 Aqsa Martyrs Brigades. That's their own document. They had
25 the head of the intelligence service on the witness stand, he

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Summation - Mr. Yalowitz

1 didn't say a word to try to rebut this. Not one word.

2 And it's not just Said Ramadan. Look at all these
3 files I'll show you, Nasser Aweis, Ahmed Salah, Nasser Shawish,
4 Faras Ghanem, Himli Hamash, Ahmed Barghouti, Mohammed Abdullah,
5 Marwan Barghouti, Muhammad Muslah, over and over and over again
6 their own documents link up Fatah and Al Aqsa Martyrs Brigades.
7 Even the U.S. government in an unclassified State Department
8 report says that Al Aqsa Martyrs Brigades members came from
9 Fatah.

10 Now number three, Arafat and his agents knowingly gave
11 material support and resources to Fatah and AAMB operatives.
12 How do we know this? That's that binder of evidence that the
13 defendants' lawyer was making fun of for the June 19 attack.
14 It's a whole binder of evidence showing knowing support,
15 material support and resources. And you listen to Judge
16 Daniels' instructions on material support and resources,
17 because he's going to tell you what the law is on this. You
18 need not find that a person for whose conduct a defendant is
19 liable intended that a specific crime or terror attack be
20 carried out. Listen to Judge Daniels, not to the defense
21 counsel.

22 Let's start with those IDF reports on captured
23 documents. Those documents provide evidence of the role of
24 Arafat and PA apparatuses. Large sums of money are transferred
25 on a monthly basis in order to finance terrorist

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Summation - Mr. Yalowitz

1 infrastructure. And remember, Arafat didn't strap bombs on
2 himself or his top guys, he worked through agents.

3 And we saw that in the captured documents, too.
4 Arafat does not hold direct contacts with the heads of the
5 terror cells. Instead he uses intermediaries. And the
6 captured documents identified people, Marwan Barghouti, Hussein
7 Al-Sheikh, Fuad Shubaki.

8 Counsel for the defense told you a little bit about
9 Marwan Barghouti's conviction. There are two important things
10 about this conviction that I want you to focus on. The first
11 is Marwan Barghouti was convicted in May of 2004. After that
12 no conclusive evidence report came out.

13 The second is what he was convicted for, and I will
14 read to you from paragraph 140. The terror attacks that are
15 the subject of this indictment and many others were executed by
16 the field operatives of the Fatah, members of the Tanzim, and
17 by cells that were organized within the framework that is
18 called the Al Aqsa Martyrs Brigades. The defendant was the
19 leader of Fatah in the West Bank and commander of the Tanzim
20 and the Al Aqsa Martyrs Brigades, as he admitted during the
21 course of his interrogation and as proven by much additional
22 evidence. The defendant's roles in the leadership of the
23 terrorist organizations were also described at length above.
24 Paragraph 140. If you have some doubt about who Marwan
25 Barghouti was or what he did, go to paragraph 140.

F2JTSOK4

Summation - Mr. Yalowitz

1 And what about Shubaki? He was convicted, too. He
2 was convicted of paying the Al Aqsa Martyrs Brigades with PA
3 money. You can read that in his conviction. And he was
4 convicted of getting weapons for the Al Aqsa Martyrs Brigades
5 under orders. And we heard the testimony, unrebutted, who had
6 the authority to issue orders to Fuad Shubaki. He only had one
7 supervisor, Yasser Arafat. Those dots are not hard to connect.

8 I also want to show you had Nasser Aweis' conviction,
9 which is in that binder. This was Nasser Aweis' testimony on
10 which he was convicted. On whose behalf -- Nasser Aweis was a
11 PA employee. In fact, he still is. He's been promoted twice.
12 He's been skipped in ranks because they're so proud of him.

13 "Q. On whose behalf did you carry out the terrorist attacks
14 which you noted above?

15 "A. On behalf of Al Aqsa Martyrs Brigades, which belongs to
16 the Fatah.

17 "Q. Who is in charge of the Fatah?

18 "A. Yasser Arafat is in charge, and he is the chairman of the
19 Fatah movement.

20 "Q. Who used to provide the money for the perpetration of the
21 terror attacks against Israeli targets?

22 "A. People in the Tanzim Fatah in the West Bank and in Lebanon
23 used to provide me with money."

24 Nasser Aweis, convicted January 22, 2002 attack in
25 which he sent a suicide terrorist to shoot at the heart of

F2JTSOK4

Summation - Mr. Yalowitz

1 Shayna Gould and to shoot at the heart of Shmuel Waldman. He's
2 the line that connects Yasser Arafat and these defendants to
3 this attack and two attacks like this by providing material
4 support in the form of money.

5 You saw a lot of raw documents in the trial, too,
6 showing actual payment transfers. Document after document,
7 actual records showing actual transfers of money to Fatah,
8 showing actual approval signed by Yasser Arafat himself saying
9 use PA money to pay these people. And you heard Al-Sheikh
10 himself testify, sworn testimony, Fatah and the PLO are the
11 same because the Fatah and the PLO budget are with Arafat.

12 Now there is another small piece of this material
13 support puzzle, and that is the question of whether Arafat
14 acted knowingly and whether his agents on his behalf acted
15 knowingly. That's pretty easy here. Judge Daniels is going
16 give you an instruction on when somebody acts knowingly, but
17 you already know it. A person acts knowingly if he acts
18 intentionally and voluntarily, and not because of ignorance,
19 mistake, accident, or carelessness. Whether the defendants
20 acted knowingly may be proven by their conduct and by all the
21 facts and circumstances of this case.

22 This is not an accident case. Arafat didn't
23 accidentally approve money to terrorists. Nassar Aweis didn't
24 accidentally get money from Fatah to go out on terrorist
25 activities. Everyone understood what the Al Aqsa Martyrs

F2JTSOK4

Summation - Mr. Yalowitz

1 Brigades was doing. Even the U.S. government, our government,
2 saw that, U.S. State Department. Documents show direct
3 payments from the PA to Fatah party activists, some of whom
4 were also affiliated with the Al Aqsa Martyrs Brigades who have
5 been involved in violence. The payments were likely made with
6 the knowledge that the intended recipients had been involved in
7 violence and terrorism. That's knowing support of the Al Aqsa
8 Martyrs Brigades by Arafat and his agents. That's all there is
9 to material support.

10 Let's talk about the other way you might hold the PA
11 liable. Judge Daniels is going to instruct you this part
12 applies to the PA, not to the PLO.

13 It's that third question on your verdict sheets. Were
14 the employees who pulled the trigger, were the employees who
15 videotaped the suicide terrorists, were the employees who gave
16 them money, were the employees who sent them on their way, were
17 those employees acting within the scope of their employment?

18 Now let's put this in perspective. If you have an
19 NYPD guy who wants to avenge the death of his brother and he
20 goes out and commits a terrorist act, what the NYPD does with
21 that guy tells you whether he's within the scope of his
22 employment. Do they fire him and prosecute him and put him in
23 jail like they should? You can't pin his crime on the NYPD if
24 that's what he does. But if you've got hundreds of NYPD cops
25 going across to New Jersey killing people in New Jersey --

F2JTSOK4

Summation - Mr. Yalowitz

1 MR. ROCHON: Objection.

2 THE COURT: Overruled.

3 MR. YALOWITZ: If you have hundreds of NYPD cops and
4 they stay on the payroll and they get promotions, and the NYPD
5 writes in their files they're good in terms of security and
6 morals, and they keep paying them while they're sitting in jail
7 in New Jersey, and the NYPD writes he's in New Jersey as a
8 result -- he's in jail as a result of his fight for New York,
9 then maybe you conclude he is acting within the scope of
10 employment. What other conclusion can you reach?

11 Now Judge Daniels is going to give you the factors
12 that will guide you in this decision. There are four of them.
13 The connection between the time, place and occasion, the
14 history of the relationship between the PA and the employee as
15 spelled out in actual practice, that's an important one.

16 (Continued on next page)
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F2J8SOK5

Summation - Mr. Yalowitz

1 MR. YALOWITZ: Whether the act is commonly done and
2 the extent of the departure from the normal methods of
3 performance.

4 Factor 4: Whether the specific act was one that the
5 PA could reasonably have anticipated?

6 Those are factors that you can look at.

7 You don't have to meet all of them. They are things
8 that will guide you in your deliberations on scope of
9 employment. And I think when you go through the evidence, you
10 are going to see this is a pretty easy one too. Because,
11 obviously, the biggest employee that they have, the big dog at
12 the PA, was a man named Yasser Arafat.

13 Yasser Arafat was in charge. And Yasser Arafat was
14 responsible for all of the material support that we just talked
15 about.

16 Now, let's talk a little bit about the time and the
17 place and the occasion.

18 The time was 2002 to 2004. And the place was
19 Jerusalem. And if you look in that Marwan Barghouti verdict,
20 you will see incitement, a million martyrs are marching to
21 Jerusalem, and you can connect those dots. You can connect
22 those dots. A million martyrs are on their way to Jerusalem
23 and then PA employees go send suicide terrorists, or themselves
24 go to Jerusalem and become suicide terrorists. That's a
25 connection between the time, place and occasion.

F2J8SOK5

Summation - Mr. Yalowitz

1 That's what Israel Shrenzel talked about. He said:
2 "The motivation was what Arafat preached, what Arafat decided,
3 what Arafat condoned, what orders and what atmosphere was
4 created by the PA, an atmosphere of all-out attack against
5 Israel."

6 Now, I want to talk a little bit about Shrenzel
7 because I think that he has been unfairly maligned here.
8 Shrenzel came and he was a very balanced witness. There were
9 things that he said that the defendants liked, and you saw a
10 lot of that in the defendants' closing just now. There were
11 things that he said that they didn't like and they didn't
12 cross-examine him on.

13 They asked him: You never worked for the PA? And he
14 said: Well, I hope some day there is peace and I will be able
15 to.

16 This is a man who translated the Koran because he
17 wants to bring the two peoples closer together. And I think
18 when you go back and look at his testimony and look at was he
19 an open and frank witness, I don't think you will have any
20 doubt about that.

21 Now, you can judge Shrenzel's testimony on this point
22 from the other evidence in the case as well. When the head of
23 an organization takes photo opportunities to appear in photos
24 with bazookas or machine guns or holding up posters of
25 terrorists, when he makes media appearances like that, what

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Summation - Mr. Yalowitz

1 message does that send to his employees?

2 Some of us have worked in large organizations, and we
3 see what the messaging from the top means and how important it
4 is. And this is a society in which there were thousands of
5 police officers, 38,000 police officers in a population less
6 than 3 million. That's about how many NYPD officers we have,
7 and we are a lot bigger than that.

8 Now, was Arafat in control? Ask Arafat.

9 (Videotape played)

10 MR. YALOWITZ: Total control.

11 Let's look at the history of the relationship. That's
12 one of the most disturbing aspects of this case.

13 Employees get paid and promoted even after they are
14 convicted. How many times did we see in those binders good in
15 terms of security and morals? How many times did we see in
16 those binders, he is in prison as a result of his fight for his
17 country?

18 Where are the orders on the other side? Where are the
19 orders saying don't do this? Where are the documents
20 investigating an employee for killing people? Where are the
21 documents punishing an employee for killing people? Where are
22 the documents firing an employee for killing people, or telling
23 an employee it's bad to kill people, or saying don't release
24 bomb makers from prison, or, holy cow, a terrorist has escaped,
25 let's go try and catch him?

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Summation - Mr. Yalowitz

1 We don't have anything like that in this case because
2 the evidence doesn't exist. That's not how they did it. They
3 didn't roll that way.

4 Now, we did hear from the defendants that some people
5 had some personal motives. But listen to Judge Daniels'
6 instruction on that one too, because personal motives only
7 matter if there is no employer motive at all.

8 Judge Daniels is going to say: "The test is whether
9 the employee's act was in furtherance of the employer's
10 activities and was incident to the performance of duties
11 entrusted to the employee. Where the employee's act was
12 committed solely for personal ends rather than in furtherance
13 of the employer's activities, the employer will not be held
14 liable."

15 So when a guy goes and makes a supposed revenge
16 killing, and then they promote him and keep him on the payroll
17 and tell him he is good in security and morals and say he is in
18 there as a result of the fight for his country, that's a mixed
19 motive at best. That's not solely for personal motives.

20 Let's look at the third factor, whether the act is one
21 commonly done.

22 The un rebutted testimony here is that there were
23 hundreds of employees who did this. And it makes sense if you
24 think about how many attacks there were. Attack after attack
25 after attack. We saw that in the convictions, dozens and

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Summation - Mr. Yalowitz

1 dozens of attacks. And that's only of the people who were
2 convicted in this case. Hundreds, many hundreds from among the
3 Palestinian security apparatuses.

4 Now, defendants try to suggest that their employees
5 were in jail for breaking curfew or organizing demonstrations.
6 But these are people who have been in jail for more than ten
7 years. And you heard from Michael Sfard, that legal expert
8 from Jerusalem, who testified that you don't get that kind of
9 time for breaking curfew. You get that kind of time for
10 murder. And he has only got five lawyers in his shop. He
11 doesn't have 100,000 employees. And he said he could
12 distinguish between the 5 percent who are in for murder or
13 attempted murder and the rest of them. It wouldn't be that
14 hard if you had the list. And you heard Issa say that he had
15 the list.

16 Let's go to factor number 4.

17 Well, let me just say one more thing, which is that it
18 was so common for employees to be in jail that they actually
19 passed a law about it saying, when you go in jail, we are going
20 to keep you on the payroll.

21 Now, let's talk about that fourth factor, whether the
22 specific act was one that the PA could have reasonably
23 anticipated.

24 How do you know what somebody wants you to do? How do
25 you know what somebody expects other than the words that they

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Summation - Mr. Yalowitz

1 say and the conduct that they engage in? And we all remember
2 the words that they said to their police employees in their
3 police magazines.

4 Their own magazines, their own magazines spoke about
5 blood and martyrdom. Their own magazines told people to go be
6 violent. People with guns, people's whose job it was to carry
7 a gun.

8 Here again Shrenzel: "Palestinian operatives ask
9 themselves, what is expected from me?" In his accent. What
10 Arafat wants from me? What Fatah wants for me? What should I
11 perform as a member of the security apparatuses?

12 And the answer is, you should participate. His
13 understanding was I should take an active role in the attacks
14 against Israel.

15 Look at what some of these magazines said. They said:
16 "We cannot but bow reverentially and respectfully to our heroic
17 martyrs who have watered the soil of our beloved nation with
18 their pure blood in order to prove to the whole world that our
19 Palestinian land is our right, and that blood is a small price
20 to pay on the path to liberating and defending it. This has
21 fashioned a marvelous picture embroidered with the blood of our
22 martyrs and the wounds of our heroes."

23 This is what you write to the police who carry guns?
24 Wait, there is more.

25 Our Palestinian people are persevering in the glorious

F2J8SOK5

Summation - Mr. Yalowitz

1 Intifada, the blessed Al Aqsa Intifada for a third consecutive
2 month, offering up legions of martyrs, and making the costliest
3 and most precious sacrifice in the cause of realizing their
4 legitimate aspirations of ending the Israeli occupation of our
5 land and holy places."

6 That's what you write to your security employees?
7 What do you expect they will do if you write things like that?

8 There is more.

9 "They are becoming martyrs as a sacrifice for the
10 Palestinian dream, and in compliance with the call of Al Aqsa.
11 For this reason, we today wage war in an advancing position; we
12 wage war with the occupation, continuing in our Intifada."

13 What can you reasonably foresee when you write those
14 kinds of things in a police magazine?

15 And we saw the Fatah also, their circulars.

16 "Oh, combatants, our martyrs are nobler than all of
17 us. They have made the dream a reality. Keep a firm grip on
18 the trigger. They will not enjoy security, peace and
19 stability. Let your blows intensify and let the Intifada
20 continue."

21 You write something like that to your armed
22 operatives? Can you really be surprised when they send
23 terrorists to kill civilians?

24 Now, the defendants' lawyer pooh-poohed these
25 magazines and said, that's all they can come up with. But I

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Summation - Mr. Yalowitz

1 have got to tell you, the evidence in this case is there were
2 other magazines that were even worse. And Shrenzel read them
3 and he told you about them.

4 First of all, he said: "The overall atmosphere grew
5 more and more violent."

6 MR. ROCHON: Objection, your Honor.

7 THE COURT: Overruled.

8 MR. YALOWITZ: "If you check, for example, how many
9 times the notion of blood, the notion of martyrdom is
10 repeatedly mentioned."

11 He went on and he was asked: "Do you recall seeing
12 issues of these magazines calling on people to engage in
13 liquidation or extermination or things like that?"

14 These are the defendants' own magazines. Liquidation
15 and extermination.

16 And he says: "They were. They were. You see, there
17 was a political decision to launch a wide-scale attack and to
18 support it. And then there was the whole issue of propaganda,
19 of creating the proper atmosphere in which, for example, a
20 17-year-old former contractor would go out and detonate
21 himself. Or a policeman, as we saw, reading the Shurta, and
22 for him it was clear, This is what my superiors expect from me.
23 They want me to go out and shoot indiscriminately in the
24 streets of Jerusalem."

25 When you incite people, when you pay them and when you

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Summation - Mr. Yalowitz

1 promote them for a certain kind of conduct, what can you
2 reasonably expect?

3 Your Honor, would it be a convenient time to give the
4 jury a break before we move into the next topic?

5 THE COURT: Ladies and gentlemen, let's take a
6 ten-minute break.

7 Keep an open mind.

8 I will see you in ten minutes.

9 (Jury exits courtroom)

10 MR. ROCHON: It may not come as a surprise, but we
11 have a few concerns as to some things that Mr. Yalowitz said.

12 I will let Ms. Ferguson handle the first couple.

13 MR. FERGUSON: Your Honor, first, Mr. Yalowitz is
14 making alter ego arguments. He is asking the jury to impose
15 liability on the PLO because it has the same leader and there
16 is some financial connection. He is not making an agency
17 argument. He is making an alter ego argument. The court has
18 not provided an alter ego instruction. That's very
19 problematic.

20 He is also making an alter ego argument as to Fatah
21 and Al Aqsa Martyrs Brigade. The evidence there, I think it
22 was from a State Department report that Arafat had made a
23 payment to Fatah. And he said that shows there is material
24 support to Al Aqsa. He is collapsing these entities and
25 treating them as an alter ego and there is no alter ego

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Summation - Mr. Yalowitz

1 instruction. That is going to be highly prejudicial.

2 Second, he is making an argument which the court
3 rejected. He told the jury that paying a salary to your
4 employee constitutes material support.

5 THE COURT: Say that again.

6 MR. FERGUSON: Paying salaries to employees is form of
7 material support, and if the PA employees were used for Al Aqsa
8 operations, that's the PA providing material support.

9 In your Honor's November order on a motion for summary
10 judgment, you considered that argument and rejected it and
11 said, no, that is not a form of material support, and he just
12 argued to the jury that it is.

13 We are going to need an instruction on material
14 support that clarifies that paying salaries or just the mere
15 fact that a person is an employee does not constitute material
16 support.

17 He also told the jury that prisoner payments is
18 material support, when material support has to be provided
19 knowing it's going to be used in the preparation or carrying
20 out of an attack. So, basically, he is making ratification
21 arguments you rejected and dressing them up as material support
22 when it cannot be reconciled within your language of the
23 statute.

24 In addition, when we had the discussion yesterday
25 about who can be a defendant, we agreed on a senior official or

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Summation - Mr. Yalowitz

1 other persons having duties of such responsibility that his or
2 her conduct may fairly be considered to represent the PLO or
3 PA.

4 My concern is that Mr. Yalowitz has argued that any
5 low-level employee would fit that description. You said, no,
6 that's not what you intended. He just argued to the jury any
7 beat cop would meet that description. He is saying any member
8 of the security forces would meet that description because they
9 are in uniform. And that was exactly the argument we were
10 concerned about.

11 MR. ROCHON: There also has been multiple references
12 to hundreds of PA officers locked up for killings. He said it
13 directly, and then he said it by analogy when he talked about
14 police officers from New York, hundreds of them going to New
15 Jersey and killing people.

16 There is no evidence in this case of hundreds of PA
17 officers killing people. There is evidence of PA officers
18 locked up. There is no evidence of hundreds of PA officers
19 killing people. And he has said it more than once. He said it
20 as part of his liability theory. Therefore, the misstatement
21 of the evidence is prejudicial to us on the exact issue of
22 liability. It's a misstatement of evidence that goes right to
23 the theory of liability.

24 THE COURT: As I always do, I have already instructed
25 the jury two things, and I do that specifically for these

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1 reasons. One, what the lawyers say is not evidence. It is
2 their recollection of the testimony that controls.

3 I have already indicated to the jury during the
4 summation that I will instruct them on the law. I think my
5 instructions are appropriate. I think to the extent that the
6 lawyers have made arguments that are inconsistent with those
7 instructions, as my instructions emphasize, it is my
8 instructions they must follow.

9 So to the extent that the lawyers either misstate the
10 facts or misstate the law, I have appropriate instructions in
11 my final instructions that I can give the jury appropriate
12 guidance as to how they should review this case, how they
13 should decide this case, and what standards they should use.

14 If at some point I feel that either side has gone over
15 the line, and I don't believe that either side has at this
16 point, I am prepared to consider a further objection and/or
17 either restrict Mr. Yalowitz in his argument or to instruct the
18 jury more specifically with regard to that argument, or to tell
19 them to totally disregard that argument.

20 So let's take a ten-minute break.

21 (Recess)

22 THE COURT: Mr. Yalowitz, are you ready to continue?

23 MR. YALOWITZ: I think I have got one colleague we
24 should wait for so she doesn't disrespect the jury, your Honor.

25 I apologize.

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Summation - Mr. Yalowitz

1 THE COURT: It's all right.

2 MS. WEISER: Before we bring the jury back in, is
3 there a way to adjust the heat in this room down a bit? Some
4 of the clients are feeling ill.

5 THE COURT: We will try to get the heat down.

6 Let's get the jury in.

7 (Jury present)

8 THE COURT: I am trying to get them to turn the heat
9 down.

10 Mr. Yalowitz, you can continue.

11 MR. YALOWITZ: We have got the legal framework and the
12 way the evidence fits into that legal framework, and now comes
13 the easy part which is fitting that evidence and that framework
14 into the six attacks.

15 Let's begin with January 22, 2002, 4:20 p.m. on Jaffa
16 Road. Shayna Gould and Shmuel Waldman are waiting on a bus.

17 Look how many PA employees are involved in this terror
18 cell. One, two, three, four, five, six PA employees planned
19 and perpetrated this attack.

20 Let's look at the shooter himself, the man who aimed
21 at the heart of my clients. This is what he did to prepare
22 himself.

23 (Videotape played)

24 MR. YALOWITZ: That's a PA police officer with an M-16
25 rifle in front of an Al Aqsa Martyr Brigade banner with an Al

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1 Aqsa Martyr Brigade headband.

2 "Look at what he did. He took out his M-16 rifle and
3 he raised it up, and I was his target. He screamed out Allahu
4 Akbar. When he did that, I knew what it meant. The whole
5 world was frozen. He started spraying the bullets. He didn't
6 care who was there."

7 Henna Waldman. "The person that shot my husband, that
8 was not an accident. He was the first two bullets, and he was
9 aiming for his heart."

10 Let's start with material support. These are the
11 questions you are going to see on the verdict sheet that Judge
12 Daniels is going to give you.

13 You now know how easy it is. Those policies, the fact
14 that this was an Al Aqsa Martyr Brigade attack. Shrenzel was
15 asked those questions at the very end of his direct testimony.
16 The defendants didn't cross-examine him on that. They didn't
17 rebut him on that.

18 I wrote it on the board in front of you. They never
19 came back to it. The fact that the PA and the PLO were
20 Arafat's person piggy bank for financing the Al Aqsa Martyr
21 Brigades is all you need for those first two questions, plus
22 the material support that the PA and the PLO provided in the
23 form of policies that supported not only terror in general, but
24 these very individuals.

25 By the time you get back to that room, and you will

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1 understand the way the evidence fits into the instructions that
2 Judge Daniels is going to give you, it is going to be very easy
3 to check yes on those two boxes and move forward to your next
4 task.

5 Let's go to question 3.

6 Let's go back to those four factors that we talked
7 about on the scope of employment.

8 The connection between the time and place. We already
9 talked about that one.

10 Was it commonly done? We already talked about that
11 one.

12 Reasonably expected, reasonably anticipated. We
13 talked about that one.

14 Let's talk about some specifics, some very, very
15 specific documents about the history of the relationship
16 between the PA and the six employees who perpetrated this
17 crime, as spelled out in actual practice, and let's start with
18 the shooter.

19 This is the payroll record of Said Ramadan from the
20 year 2002. It's in your binder. What do you notice about it
21 that's strange? This is a man who died committing his crimes
22 in January of 2002 and they kept him on the payroll in
23 February, in March and April and May and on through December,
24 they kept him on the payroll.

25 What did they say about him in their documents, their

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1 official government documents? They said, he was martyred
2 while performing his national duty in a Fatah operation. And
3 they promoted him and the said he is good in terms of security
4 and morals.

5 What does that say about their expectations of his
6 conduct? What does that say about whether he was acting in
7 furtherance of their activities and in the scope of his
8 employment?

9 And it's not just him. Look at Ahmed Barghouti. 12
10 counts of murder. He is still on the payroll. He has been
11 promoted twice. Once pursuant to the direction of the
12 president. And I'm not saying the president sits there and
13 picks out individuals himself. I'm saying, why does the
14 president of their entity promote people who do this? Can they
15 not tell who is a terrorist? Is it so common in their
16 organization they don't even know who the terrorists are?

17 Look at their intelligence files. It says what he
18 did. He is on 15 life sentences. It's right there in their
19 intelligence files. By the way, he is good in terms of
20 security and morals. Their words, not mine.

21 Look at Nasser Aweis. He is the one whose testimony
22 we read earlier about how he got financing from Fatah's Tanzim,
23 from Arafat. He was on the list of most wanted terrorists.
24 Convicted of 14 counts of murder. In prison as a result of the
25 fight for his country. Still on the payroll, still been

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1 promoted. He is good in terms of security and morals too if
2 you ask these defendants. Good in terms of security and
3 morals.

4 Here is Mohamed Mousleh. He was a very active AAMB
5 operative. Those are not my word, it's their words. Very
6 active. Eight counts of murder. His security and moral
7 status, according to them, is good.

8 Here is Majed al-Masri. He is a ten-time murderer
9 according to them because he was fighting for his country. He
10 has been promoted twice.

11 That's the relationship between this employer and
12 these terrorists as spelled out in actual practice. But here
13 is something really profound in Majed al-Masri's file. Majed
14 al-Masri was a troubled employee, and he was disciplined for
15 firing off his Kalashnikov rifle in front of Fatah
16 headquarters. And he was warned. He was given a final warning
17 because he endangered Fatah people. And his final warning was,
18 if he ever violates instructions again he is going to be fired.

19 Well, guess what? He has been convicted of murder,
20 and he has not been fired. So you tell me, where are the
21 instructions telling these people not to commit murder against
22 civilians? That's the scope of employment. That's the
23 relationship in actual practice. It's not very hard to check
24 box 3 yes.

25 Let's go to January 27, 2002, Jaffa Road. 12:30 p.m.

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Summation - Mr. Yalowitz

1 Mark and Rena just bought shoes for their 12 year old.

2 Now, this is a case of circumstantial evidence. I
3 don't have a conviction in this one. The judge is going to
4 give you instructions about circumstantial evidence and he is
5 going to teach you it's pretty simple. If you're in a room
6 with the shades drawn and a bunch of people walk in and they
7 are dripping wet and they are carrying umbrellas and water is
8 streaming off the umbrellas, you don't have any direct evidence
9 that it's raining outside, but your common sense tells you,
10 given the circumstances, it's raining outside.

11 So let's look at the circumstantial evidence. One
12 other thing he is going to tell you about, which is what is an
13 agent? He is going to tell you an individual person need not
14 be an employee of the entity in order to be an agent. You
15 could be a secret agent. Or you could have a very simple
16 agency relationship. If I give you money and tell you to go to
17 McDonald's and buy me a Big Mac, you're my agent. It's not
18 that complicated. If I give you a bomb and tell you to go
19 across the street and blow yourself up, you're my agent. It
20 all depends on what you're trying to accomplish.

21 Now, Wafa Idris spent some time in the Mukataa. And I
22 want to be very clear who worked in the Mukataa. Shrenzel told
23 us he wasn't the only one. It's the compound, that very huge
24 compound in Ramallah where Arafat resided, other heads of the
25 security apparatuses, various other organs of the PA. It's the

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1 government headquarters.

2 So as you go through this evidence, think about who
3 has an office in the Mukataa. You can connect those dots.

4 Now, here is what Noor said in his custodial
5 statements. He said: "In June of 2001, I got to know Wafa
6 Idris. After about two weeks she told me that I would meet her
7 supervisor at the Palestinian Authority and I agreed."

8 The defense counsel tried to make some hay about
9 inconsistency between the two custodial statements. And you're
10 going to see both of them. They are in your binders. I gave
11 you both of them. 465 and 467. And there is no inconsistency
12 between those for our purposes.

13 In August 2001, I went with her to the Mukataa for a
14 meeting, and we arrived there at the place of blank. Age about
15 40, working for the blank.

16 Well, who works in the Mukataa? You and I know that.

17 What else did Noor have to say? In the eighth month
18 of 2001, Wafa Idris recruited me as a source for blank and
19 introduced me to blank. Each time I had information I would
20 forward that information to blank. His real name is blank,
21 aged about 40, and he is tall, mustached, fat and fair
22 complexioned.

23 There is no inconsistency between those two documents
24 about what Noor was doing or who he was doing it for. You can
25 connect those dots.

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Summation - Mr. Yalowitz

1 Now let's look at what he said about how the bomb got
2 delivered to Wafa.

3 On Thursday, January 24, 2001, it was three days
4 before Wafa carried out her suicide attack. I called blank at
5 his office and asked to meet him and we met in the afternoon at
6 the Mukataa. I called blank and told him that Wafa was
7 prepared to carry out an attack and blank asked for us to come
8 to his office in the Mukataa on Friday, January 25, 2002, and
9 we came to the office, Wafa and I.

10 We came to the office. Who has an office in the
11 Mukataa?

12 Next day. On Saturday, January 26, at 4:00 p.m., Wafa
13 called me and told me that she had come to Ramallah. I came
14 and took her in my vehicle and she travelled to blank's office
15 in the Mukataa.

16 Who has an office in the Mukataa?

17 Blank asked me to bring a bag behind the door of his
18 office. I took the bag in my hand. Blank told me to be
19 careful when I bring the bag and not to open it and to put it
20 next to Wafa on the floor.

21 This is in his office in the Mukataa.

22 Blank told Wafa to pick up the bag and see what it
23 weighed, and she said it was not very heavy. Wafa asked how to
24 activate the explosive device, and blank said he would explain
25 it to her on the following day. We went out, Wafa and I, from

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Summation - Mr. Yalowitz

1 the Mukataa and I went home.

2 Now, you can connect these dots as well as I can.
3 Wafa has a preexisting relationship with her supervisor at the
4 PA. What kind of an agency recruits people to provide
5 information the way they recruited Noor? What kind of an
6 agency wants to gather information and has people with offices
7 in the Mukataa? You can connect those dots.

8 Now, counsel for the defendant pointed out that some
9 things happened in the home of an individual as well, but there
10 is nothing inconsistent about that. Take a look at that
11 document. That document talks about convincing Wafa,
12 convincing her to become the suicide bomber.

13 And Noor said: We sat in blank's home, Wafa and I and
14 blank and discussed her becoming a suicide terrorist.

15 OK. That's before she goes to the office in the
16 Mukataa. There is nothing inconsistent. I urge you to read
17 those documents and read that conviction because you won't have
18 any trouble connecting these dots at all.

19 And that's not the only circumstantial evidence we
20 have in this case. Let's look at Exhibit 233. We saw
21 testimony about it yesterday. This is about our old friend
22 Tawfiq Tirawi, head of the intelligence service in 2002.

23 "We saw the lady who got the intelligence and reported
24 it. She wrote that it was important. And the intelligence she
25 got wasn't that he did it. The intelligence that she got was

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Summation - Mr. Yalowitz

1 that he was covering it up. Tirawi was part of a cover-up. He
2 requested that the family would not announce that Wafa was the
3 one who carried the attack and he came up with a story. Say
4 she got married and moved to Jordan. And this lady who lived
5 next door to Wafa Idris said that was casual conversation and
6 people on the street knew about it. "

7 Casual conversation. And she thought it was important
8 and she wrote it in a memo and it went to her boss and her
9 boss's boss and her boss's boss. And that's all they have on
10 this. They didn't investigate it --

11 MR. ROCHON: Objection.

12 THE COURT: Overruled.

13 MR. YALOWITZ: They didn't bring you any evidence that
14 they investigated it. They didn't bring you any evidence of
15 anybody who wrote a report saying what happened. They swept
16 this under the carpet, ladies and gentlemen, you and I know it,
17 asking the family to hide the truth.

18 But at least one PA employee thought it was even more
19 telling than just a cover-up.

20 MR. ROCHON: Objection.

21 THE COURT: Overruled.

22 MR. YALOWITZ: Look at what the boss of the lady who
23 testified yesterday wrote. This was her boss. He wrote: "Be
24 informed. This information proves that the General
25 Intelligence are involved in the issue of Wafa Idris."

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Summation - Mr. Yalowitz

1 Proves that the General Intelligence are involved in
2 the issue of Wafa Idris.

3 Where was he to explain what he did to investigate
4 that? Where is his report?

5 And remember, Tirawi is not just involved in this
6 incident. Tirawi is involved in a lot of bad conduct. He is
7 implicated in a lot of bad conduct. And counsel for the
8 defendant makes the claim that he is a free man and makes you
9 think he never did anything wrong. But he is a globetrotter
10 today, based on the testimony of Faraj, who we will talk about
11 his testimony. If he is so free, where is he?

12 MR. ROCHON: Objection, your Honor.

13 THE COURT: Overruled.

14 MR. YALOWITZ: What was the result of this bomb
15 delivered to Wafa Idris from somebody's office in the Mukataa?

16 That's the result.

17 Jamie Sokolow, 12 years old. "Right away I knew what
18 had happened. I knew a bomb went off. And I kept saying to
19 myself, no, I'm 12 years old and I'm from New York and I'm
20 going to stay alive."

21 Rena Sokolow. "The next thing I know I looked over to
22 my right and I saw a severed head of a woman about 3 feet away
23 from me. And I looked and there was this a little girl looking
24 down at me and I wasn't sure if it was Jamie. Her face was all
25 disfigured and bleeding."

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Summation - Mr. Yalowitz

1 Now let's go to the verdict sheet.

2 Questions 1 and 2, material support.

3 Remember those policies. I can't even keep straight
4 when it's the PA and when it's the PLO that's paying those
5 prisoners or paying those martyrs. They keep moving it back
6 and forth pursuant to presidential order. I can't even keep
7 straight whether it's the PA or the PLO giving those terrorist
8 employees their promotions. They keep putting both of those
9 things on their documents.

10 And remember your dots. It's an Al Aqsa attack.
11 There is no dispute about that. Al Aqsa is the armed wing of
12 Fatah. We didn't hear any contrary evidence on that.

13 Arafat and his agents knowingly gave material support.
14 You have a whole binder of evidence on that from June 19.

15 We saw the policies here in action. The Martyrs
16 Institute paying Idris's family and glorifying her because she
17 blew herself up.

18 The PA and now the PLO putting Noor on the payroll
19 because he participated in a murder, an attempted murder.

20 It's not that hard. When you get to that verdict
21 sheet for those first two questions, you're going to check yes.

22 When we go to the third question, we go to scope of
23 employment.

24 Here you can connect the dots. When it's common
25 practice to engage in terrorism, when you don't investigate it,

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Summation - Mr. Yalowitz

1 when you cover it up, when people are keeping bombs in their
2 office and giving them to terrorists and explaining how to use
3 them, when you glorify terrorists, it's not that hard to
4 connect the dots that one of these people was providing
5 material support in the scope of their employment.

6 As a matter of fact, you can go straight to the top on
7 this one too. Yasser Arafat provided Al Aqsa support in the
8 scope of his employment. He did whatever he wanted. He was
9 the top dog.

10 When you think about as circumstantial evidence and
11 you connect the dots, this is an easy one to check yes.

12 Let's go to March 21. 4:20 p.m. Alan and Yoni
13 walking home, holding hands, hoods up against the cold. But
14 that's not where the story begins. The story begins with
15 Tirawi and Arafat.

16 This is that memo, 1060, from Tirawi to Arafat,
17 informing them that they had arrested Hashaika and Shawish.

18 "The person who wanted to perpetrate a suicide
19 operation, of whom I told your Honor yesterday, was arrested
20 today in Tulkarm. Mohammed Hashaika and Nasser Shawish. The
21 matter is at your Excellency's discretion."

22 Now, we saw Abdel Karim Aweis in this case, and he is
23 the one who arranged the release. This was his admission,
24 which the defendants didn't show you in their closing.

25 "In early March 2002, Muhammad Hashaika was remanded

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Summation - Mr. Yalowitz

1 in the Mukataa complex. Following the request of the
2 defendant, who is in the General Intelligence of the
3 Palestinian Authority, Mohammed Hashaika was released from the
4 said remand."

5 Now, the defendants had a document that said that the
6 guy escaped. And take a look at that document. I put it in
7 your binders because I wanted you to see all the evidence.
8 That document was written in 2012. And that's the only
9 evidence we have suggesting an escape.

10 Think about it. A suicide terrorist is in custody and
11 he escapes and there is no news reports, there is no APB, not a
12 single document saying he escaped. There is not a single
13 witness who comes from the police department or the
14 intelligence department to this court to say, yeah, I tried to
15 catch him; yeah, he got out and here's why. That's not
16 believable. This is a court of law. If these people had
17 evidence of this guy escaping, they should have brought it to
18 you and they chose not to do that.

19 MR. ROCHON: Objection, your Honor.

20 THE COURT: Overruled.

21 MR. YALOWITZ: It wasn't just Aweis either. Tirawi
22 gave weapons for this attack.

23 Here is Shrenzel again.

24 "Given our overall knowledge about the profound
25 involvement of Tirawi during the whole period, in the series of

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Summation - Mr. Yalowitz

1 attacks, of covering up, of providing weapons, for example, the
2 explosives used in the Hashaika attack, if we take all of the
3 Tirawi file into consideration, I think it's more likely than
4 not that he had prior knowledge and involvement in that
5 attack."

6 That's the Idris attack, but he is talking here about
7 the Hashaika weapons. That was Shrenzel's dispassionate,
8 professional assessment.

9 They did more than that. They trained the driver too.
10 Look at what she had to say about it.

11 (Videotape played)

12 (Continued on next page)

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Summation - Mr. Yalowitz

1 MR. YALOWITZ: Of course there's training. That's
2 material support. Training. Releasing suicide terrorists.
3 Five weeks later, five weeks after his arrest Hashaika blew
4 himself up. That's the result, a seven-year-old child, seven-
5 year-old child with a screw in his head.

6 Revital Bauer. Somebody wanted to kill my family.
7 Somebody wanted to kill a seven-year-old child. Alan saw the
8 terrorist and the terrorist certainly saw Yehonathon. He saw a
9 seven-year-old child and he saw that he was going to kill or
10 injure a little boy, a seven-year-old child. It's not just the
11 release, it's not just the training of the driver.

12 There was another thing that Aweis did. When you get
13 to -- when you think about material support for Hashaika and
14 his attack, it's pretty easy. This is another Al Aqsa attack.
15 Look at the support for the employees, look at the support for
16 the non-employees. Look at the number of people who were
17 involved, all of whom got money from the PA after they did this
18 in accordance with policies that were pre-existing. This was
19 another undisputed Al Aqsa attack. Defendants didn't
20 cross-examine Shrenzel on this or offer any evidence that it
21 was not an Al Aqsa attack. And how do we know that the PA and
22 the PLO provided material support to Al Aqsa? That binder of
23 evidence. It's pretty easy to check yes on questions one and
24 two.

25 And when we talk about question three, that scope of

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Summation - Mr. Yalowitz

1 employment question, it's not just Yasser Arafat. We start
2 with Arafat, he's at the top of the ladder, but remember, none
3 of these people were working solely for their own personal
4 motives. We know that. What makes a person a rogue employee
5 is not what evil they have in their heart, it's how the
6 employer treats them as a consequence of their acts, what an
7 employer says to them before and after they conduct the crime,
8 what an employer does before and after they conduct the crime.

9 This guy, Aweis, he didn't just release Hashaika, he
10 guided him to detonate his charge and cause the deaths of as
11 many Israeli civilians as possible. The defendant clarified to
12 Hashaika that if he would be arrested he would have to detonate
13 his charge on the spot, and that the main thing will be that he
14 would kill at least one, but would nonetheless kill.

15 Now when we think about scope of employment, remember,
16 you already have the three factors, time, place and occasion.
17 Was it common? What are their reasonable expectations from
18 their messaging to their employees?

19 And let's look at the history of the relationship with
20 Aweis in actual practice. When they hired Aweis, he was
21 already a convicted axe murderer. That's who you hire as a
22 police officer, a convicted axe murderer? He's on the list of
23 the most wanted terrorists. He gets convicted of five counts
24 of murder, and what do you do with him? You pay him and you
25 promote him.

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Summation - Mr. Yalowitz

1 And they didn't just pay him and promote him while he
2 was in prison, they paid and promoted him while he was on that
3 Zinni list of most wanted terrorists. January, February,
4 March, April of 2002, he is on a list of most wanted
5 terrorists, and the defendants are paying him his usual salary.
6 How do you get your salary? You go to the bank and pick it up
7 by wire, you come into the office, you get a check. In actual
8 practice the relationship with this murderer was that they were
9 expecting this was going to be his regularly conducted
10 activity. When you get to question three, check yes for
11 Arafat, check yes for Aweis, check yes for Tirawi.

12 Let's go to June 19, 7:10 p.m. French Hill Junction.
13 Seven killed. Remember Rabbi Mandelkorn's testimony. My son
14 was the first one to leave the bus. He wanted to get home
15 fast. He got out of the bus with his guitar. My son comes out
16 this like, he's running down to here, and boom. He was the
17 only boy on the bus who was wounded because the bus had moved
18 up.

19 We saw the pictures of that bombing in French Hill,
20 and we saw the weapon collected. Ordinary household item
21 turned into an instrument of death and evil.

22 Now this attack is a little different because no
23 employee of the PA was brought to justice. But we know that
24 this was an Al Aqsa attack, and it came after our government
25 had designated the Al Aqsa Martyrs Brigades as a terrorist

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Summation - Mr. Yalowitz

1 organization. And why did our government do that? Our
2 government made a determination that the Al Aqsa Martyrs
3 Brigades has committed or poses a serious risk of committing
4 acts of terrorism that threaten the security of U.S. nationals
5 or the national security, foreign policy, or economy of the
6 United States.

7 Let's look at the evidence, undisputed, uncrossed.

8 Did the Al Aqsa Martyrs Brigades claim credit for the
9 June 19 attack?

10 Yes, they did.

11 What is your opinion as to whether Al Aqsa Martyrs
12 Brigades was responsible for the June 19 attack?

13 Yes, they were.

14 Now you heard counsel for the defense try to make hay
15 on the typo in the binder saying that it was a June 18 attack.
16 And there is a typo in that binder, and Shrenzel was asked
17 about it. And he said -- he looked at it and he assessed it,
18 and he was convinced that it was the June 19 bombing, not the
19 June 18. There's a report from the government that says that
20 June 18 and 19 both have suicide attacks. One was Hamas, and
21 Al Aqsa was the other.

22 And when you look at that binder, you'll see that the
23 Awada attack was Al Aqsa. So there is that typo, and Shrenzel
24 looked at it, and he satisfied himself, he looked at the kinds
25 of evidence that experts are allowed to look at. He didn't

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Summation - Mr. Yalowitz

1 have any doubts. And when counsel for the defense objected to
2 that testimony, Judge Daniels told him he could cross-examine
3 if he wanted to, and he chose not to. Now we see why. He was
4 planning to lay in wait until now and try to confuse you.

5 MR. ROCHON: Objection, your Honor.

6 THE COURT: Sustained. This case is not about the
7 lawyers.

8 MR. YALOWITZ: Now how do we know that Al Aqsa was
9 continuing to get financing after it got designated? Shrenzel
10 investigated that. And he came to you and he explained it.

11 "Q. As of June 2002, was the financing continuing?

12 "A. Yes. We have strong evidence, as a matter of fact, that
13 Arafat himself provided financial aid to AAMB squads just a few
14 days after the attack that we are discussing, namely a few days
15 after June 19."

16 Just like hiring somebody to do a job, they go, they
17 do the job and then you pay them. Arafat paid the Al Aqsa
18 Martyrs Brigades in June of 2002.

19 And it's not -- that's not the only payment. We have
20 direct payments to the family of Awada, including a payment
21 from the president of the PA. This is in Awada's martyr file.
22 6,000 shekels. A gift from his Excellency, the president, to
23 the family of martyr and hero Said Awada to his mother for the
24 appreciation him blowing himself up at the age of 17.

25 What 17-year-old wakes up one day and says I think I

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Summation - Mr. Yalowitz

1 will blow myself up and kill people? Do you think they come up
2 with that on their own?

3 There are four questions here, they're all about
4 material support. Two of them relate to just regular material
5 support, and two of them relate specifically to that question
6 of giving material support to the AAMB. And those second two
7 are easy to answer based on Mr. Shrenzel's unrebutted,
8 unchallenged testimony about that June payment.

9 Let go to Hebrew University. This one was a Hamas
10 operation. The operative was Abdullah Barghouti. Abdullah
11 Barghouti was a one-man terror industry. The defendants
12 admitted that they had been told by the United States and/or
13 Israel to arrest or detain him before July 31, 2002.

14 And you heard testimony, unchallenged testimony, about
15 that revolving door policy from Eviatar. If the PA would
16 receive requests from Israel to arrest people who were involved
17 in acts of terror, it would send them in through one door, and
18 after a very short period of time, it would send them out the
19 other door. In effect, the revolving door enabled those wanted
20 men to continue to perpetrate the very same acts of terror.

21 We even saw it in one of the documents the defendants
22 put up today in which Noor was in custody for 40 days and then
23 he was released. He said I was released. Who releases
24 murderers like that?

25 As for Barghouti, even the President of the United

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Summation - Mr. Yalowitz

1 States asked that this man be arrested because of his role in
2 the Sbarro pizza bombing. August 9, the Palestinian Authority,
3 Chairman Arafat must condemn this horrific terrorist act, act
4 now to arrest and bring to justice those responsible.

5 So what happened? There was a kind of deal to arrest
6 Abdullah Barghouti. And here were the players, Jabril Rajoub,
7 who was Faraj's boss, Faraj was the guy who came and testified.
8 Marwan Barghouti, head of the Al Aqsa Martyrs Brigades, and
9 Hassan Yousef, the father of Mosaab Yousef who gave that video
10 testimony. And the deal was described on tape by Mosaab
11 Yousef. Here's what he said.

12 (Video recording played)

13 MR. YALOWITZ: Three weeks later Abdullah Barghouti is
14 in fact released by the preventive security, Jabril Rajoub's
15 outfit. We were detained in the preventive security prison
16 from that day until the day on which Abu Ali Mustafa was
17 eliminated. We heard yesterday that was August 27, three weeks
18 later. After his elimination, they released us from the
19 prison.

20 Now counsel for the defense wants you to think that
21 Abdullah Barghouti and Mosaab Yousef weren't telling the truth.
22 He wants you to think that Abdullah Barghouti escaped. Well,
23 if a bomb maker -- a known bomb maker escapes, and this is a
24 guy that the President of the United States said needed to be
25 brought to justice, a known bomb maker escapes and there's no

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Summation - Mr. Yalowitz

1 reports on it? There's like some oral report, oh, I heard he
2 escaped? Come on. Think about when the Boston Marathon bomber
3 was on the loose --

4 MR. ROCHON: Objection.

5 THE COURT: Sustained.

6 MR. YALOWITZ: -- the whole city was locked down.

7 THE COURT: Don't use that example.

8 MR. YALOWITZ: Think about what you would expect if a
9 guy really escaped. You would at least have some document on
10 which to base your claim that he escaped.

11 MR. ROCHON: Objection, your Honor.

12 THE COURT: Overruled.

13 MR. YALOWITZ: You would have some person who saw him
14 escape. You would have some person who said I showed up at
15 jail and he was escaping, we tried it catch him. Not some guy
16 who was in another town and said I heard he escaped. This is a
17 court of law, you bring real evidence if you have something to
18 prove.

19 Now after his release, Ahmed Barghouti and another guy
20 transferred Abdullah Barghouti to a safe house, from the prison
21 to an apartment. And Abdullah Barghouti was convicted of
22 providing material support to Hamas for that. Because when you
23 take a guy to a safe house, that's material support. That's
24 harboring a terrorist. It's not that complicated.

25 And who was this other person? You can connect those

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Summation - Mr. Yalowitz

1 dots. Ahmed Barghouti was not some lowly driver, as was
2 suggested earlier today, Ahmed Barghouti was the right-hand man
3 and bodyguard of Marwan Barghouti, head of Al Aqsa Martyrs
4 Brigades. That's in your binders. You remember Faraj was
5 questioned about Ahmed Barghouti on cross. He was shown a GIS
6 document explaining exactly who Ahmed Barghouti was. He
7 couldn't even admit that it was his own document from his own
8 intelligence agency even in the face of the defendants'
9 stipulation.

10 What happened next? There was a killing spree.
11 Triple bombing in Jerusalem, Saturday night, December 1st, a
12 bombing March 9, a bombing May 7, a bombing June 30, a bombing
13 July 21, finally Hebrew University, July 31, bomb, bomb, bomb,
14 bomb, bomb. What do you expect is going to happen when you
15 take a bomb maker and let him out of prison and put him in a
16 safe house?

17 And look at what the results were. That's a
18 cafeteria. That's people who were eating in the cafeteria.

19 Larry Carter. In the newspaper, five Americans dead,
20 four are named. Diane is not named. And then it dawned on me,
21 she was so badly mutilated they had to use her fingerprints to
22 identify her.

23 Richard Blutstein. I remember one of the photos.
24 There was a bloody chair, and it wasn't a little blood, it was
25 like globs of blood. And I don't know if it was the chair, but

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Summation - Mr. Yalowitz

1 it might well have been the chair that Ben was sitting on.

2 Now this verdict sheet has a lot of questions.

3 Because the defendants harbored a terrorist, provided material
4 support for terrorism, provided material support to Hamas.

5 There are six different questions on pure material support, and
6 the answer to all of them is yes.

7 And then there's the scope of employment question for
8 the PA. And you've got -- again you've got Yasser Arafat, and
9 again you've got Ahmed Barghouti bringing the guy to a safe
10 house with another person. You can ask yourselves is that
11 scope of employment? Is that regularly conducted activities?
12 Is that in furtherance of the activities of the PA?

13 Now I just want to give you one more comment about
14 Hebrew University. Defendants are claiming that they can't be
15 liable because by the time of the bombing, time had passed
16 between the release of the bomber, and he was hard to catch.
17 But that's not what cause is. Cause is pretty simple. We have
18 to show that the unlawful conduct played a substantial part in
19 bringing about or causing the injuries, and that the injuries
20 were either a direct result of the unlawful activity or at
21 least a predictable consequence.

22 Well, that's pretty easy to satisfy here. If you
23 don't let him out of jail, if you don't give him a safe house,
24 he can't elude detection. He's in jail, he's not making bombs,
25 he's not killing people. And if you do let him out, it's

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Summation - Mr. Yalowitz

1 predictable he's going to kill people. That passage of time is
2 no bar to liability here.

3 Let's go to January 29. By this point you get the
4 picture. Look at all these PA employees involved. This is
5 another Al Aqsa Martyrs Brigades attack. Even the suicide
6 bomber was a PA cop. He was fired for a couple of weeks, but
7 they put him back on the force because he blew himself up.
8 It's those policies, it's that approval.

9 And look at what happened.

10 (Video recording played)

11 MR. YALOWITZ: Karen Goldberg had to go to the
12 coroner's office. Her husband's two very good friends were
13 there and they said they would identify the body. They told
14 her it was better that she didn't go in.

15 Chana and Karen went to pick up his things. They
16 found a watch. It had blood on it. They found his knapsack.
17 His books. Everything had the smell of burnt flesh and blood.

18 What did the defendants say about the man who did
19 this? What did they say he was doing? They said he worked as
20 a first sergeant in the police until he was martyred, and they
21 said he was performing his national duty.

22 What did they say and do about the other employees?

23 Ahmed Salah, convicted of 19 counts of murder. He's
24 been promoted twice. They don't have any security or moral
25 comments about him.

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Summation - Mr. Yalowitz

1 Hilmi Hamash, he's in prison for military activities
2 on behalf of the Fatah movement. No security or moral comments
3 about him. They think he's good.

4 Abdel Magdad, nine of the 19 counts of murder. The
5 defendants think he's a man of good morals. A man of good
6 morals? It's pretty easy to check box three yes for the
7 January 29 attack that killed Scotty Goldberg.

8 Not to mention boxes one and two, Al Aqsa attack. All
9 those support of Al Aqsa Martyrs Brigades. All that money, all
10 those people. This is an easy one to check yes on.

11 I want to talk about weighing the evidence and the
12 standard of proof. Judge Daniels is going to instruct you what
13 it means for there to be a preponderance of evidence, and I
14 want to come back to it. It's those scales of justice. Do
15 they tip? Do they tip?

16 Plaintiffs in this case brought you convictions. We
17 brought you confessions. We brought you intelligence
18 documents. We brought you government reports from our
19 government. We brought you government reports from the Israeli
20 government who had people on the ground on the scene. We
21 brought you raw documents. We brought you three dozen
22 witnesses who testified from personal knowledge or from decades
23 of expertise. You have these binders, you can ask for them.
24 You have summaries of the plaintiff families to help you
25 remember who they were. You can ask for them. You have

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Summation - Mr. Yalowitz

1 videos. You can ask for them. You have the defendants' own
2 words.

3 You remember the defendants' evidence? Me neither.
4 Me neither. I had to go back and look. They offered four
5 photographs, a map, and a letter from 1993.

6 Where are the reports saying don't do this? Where are
7 the reports saying what happened? Where are the witnesses who
8 served with these people? Where are the supervisors who said
9 don't do this, this was wrong? Where is anybody with any
10 direct personal knowledge of what happened from the defendants'
11 side of the table? They didn't offer it.

12 The only person from any security force that they
13 offered with any -- well, they did bring the lady who wrote the
14 report on 233, we talked about her. Other than her, the only
15 other person they brought was Faraj, who couldn't give a
16 straight answer. Faraj, who contradicted his own deposition
17 testimony and wouldn't admit it. Faraj, who wouldn't admit
18 that his own documents from his own agency were what the
19 defendants admitted them to be. Faraj, who wouldn't even admit
20 that Abdullah Barghouti was a killer. Faraj, who even misread
21 the Arabic in a document because he didn't want to admit that
22 one of these prisoners was putting money in his own bank
23 account instead of in his wife's bank account. Shrenzel
24 cleared that up yesterday.

25 The defendants didn't come to this court of law with

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Summation - Mr. Yalowitz

1 evidence, they came with excuses.

2 MR. ROCHON: Objection, your Honor.

3 THE COURT: Overruled.

4 MR. YALOWITZ: Excuse number one, we're paying
5 prisoners to prevent radicalization. They're paying people who
6 were multiple murderers, who are members of Hamas and other
7 designated terror organizations like Al Aqsa Martyrs Brigades
8 because they don't want them to become radicals? How much more
9 radical do you have to get to be outside the bounds for these
10 defendants?

11 Excuse number two, we pay prisoners social welfare.
12 Well, social welfare is need based. These payments aren't need
13 based. These payments are based on how much time you're
14 serving. That's not welfare.

15 Excuse number three, these people were rogue
16 employees. That's what we heard most of this morning. People
17 may have their own motives, that's always true. The question
18 is how you deal with people who do bad things. Do you fire
19 them or do you keep them on the payroll and promote them and
20 give them thousands of dollars in reward money? Is there a
21 civilized government in the world that pays people who
22 intentionally hurt innocent civilians?

23 Here's what Shrenzel says: Can you tell us what
24 policy it reflects to give promotions to individuals, such as
25 Abdel Karim Aweis, who have been convicted of murder?

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Summation - Mr. Yalowitz

1 It reflects a policy of praise, of appreciation, of
2 endorsing what he did. And this is really unthinkable, yes?
3 It's like if let's a convicted murderer that belongs to the
4 security portions of a certain country, it's unheard of, and
5 it's totally illogical that he gets promoted. And it's a
6 reflection of the policy of the PA. They wanted him to do it.
7 He did it. They praised him for that and they continued their
8 support for him.

9 Excuse number four, we couldn't conduct operations
10 because it was too violent. Well, look at those payroll
11 records. They never missed a payment. 2001, 2002, however
12 much conflict they claim there was, it wasn't too much to keep
13 paying their terrorist employees.

14 Look at the dates on the Wafa Idris murder file,
15 February 14, 2002. They didn't have any trouble staffing the
16 martyr office in February 2002. They didn't have any trouble
17 arresting Hashaika or arresting Abdullah Barghouti.

18 Let's look at what our government said about what
19 happened here. During the reporting period, the Al Aqsa
20 Martyrs Brigades increasingly used suicide bombs to enormously
21 destructive effect. On March 26 the Secretary of State
22 designated Al Aqsa Martyrs Brigades as a foreign terrorist
23 organization. Although the PA made some rhetorical calls to
24 suppress attacks from this group, these efforts were neither
25 serious nor sustained.

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Summation - Mr. Yalowitz

1 That's what our government thought was going on.

2 Excuse number five, we're for peaceful demonstrations.

3 Yeah, they talked a good game of peace when they brought
4 witnesses here. But actions speak louder than words. And what
5 are their actions? We saw the results of those actions when we
6 heard from my families.

7 They say they're against terror, but what do they do?
8 How much are they paying terrorists even today? Today they're
9 paying terrorists \$4.25 million every single month. Every
10 month. That's \$50 million a year. And that's just the
11 prisoner payments. That's just the non-employees who they have
12 joined on the payroll. That doesn't count the guys who were
13 already on the payroll, that's a different budget. Actions
14 speak louder than words.

15 Think about who they glorified and paid. Let's take
16 the example of Abdullah Barghouti. We heard his description of
17 what he did, how he made those bombs, taking screws, glueing
18 them into a bag, mixing up a batch of homemade explosives, Umm
19 Al Abed, mother of Satan they call it. Mother of Satan.
20 That's what he mixed up. Put it in a shampoo bottle. That's
21 how they made these bombs.

22 You want to see real evil, ladies and gentlemen, ask
23 for Exhibit 1140 and dump it out on the table. These screws
24 were taken out of the bodies and clothing of Alan Bauer and
25 Yoni Bauer.

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Summation - Mr. Yalowitz

1 These people took household items and turned them into
2 weapons of death. When you go back to that jury room, talk
3 about what kind -- what that kind of bomb costs. How much does
4 it cost to buy a bag of screws and mix up a batch of homemade
5 explosives? And then think about what it costs us. You saw
6 that with your own eyes what it costs us.

7 What did those screws do to Yoni Bauer? What did it
8 to to Scotty Goldberg? His friends told his wife not to look.
9 His kids saw him come home that night in a body bag in pieces.

10 What did it do to Diane Carter? The FBI told her dad
11 she had to be identified by her fingerprints.

12 What about the families? Look at how sad those
13 families are, those beautiful families who came here to tell
14 you their stories.

15 Terror, my friends, has cost us far too much. Terror
16 needs to cost these defendants more than the price of a bag of
17 screws and a shampoo bottle filled with moment made explosives.

18 Now both lawyers have been talking a lot about Judge
19 Daniels instructions which he will soon give you. And it's
20 important that you be sure when you're deciding whether the PA
21 and the PLO should be held liable for their conduct, and when
22 you're deciding the amount of damages to impose on them, it's
23 very important to decide this case strictly according to the
24 law. It's especially important because this case is really all
25 about law.

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Summation - Mr. Yalowitz

1 Terrorism is the opposite of law. Terrorism is the
2 worst form of lawlessness. And there can be no better response
3 to terrorists than to say we will not be like you. We will
4 hold you accountable under the law. That is why the United
5 States Congress passed the Anti-Terrorism Act.

6 Deciding this case in accordance with law is what
7 these families want, because they are not like the PA and the
8 PLO. Their agents didn't take to the streets with bullets and
9 bombs when their loved ones were killed or injured. These
10 families put their trust in law. They put their trust in their
11 lawyers to tell their story. They put their trust in Judge
12 Daniels to give them a fair trial. They put their trust in the
13 United States legal system which produces peaceful justice.
14 And they have put their trust in you. All we can ask is that
15 you follow Judge Daniels' instructions, and that, I'm
16 confident, will lead to the justice that these families
17 deserve.

18 Now what is justice? Can you bring a father back?
19 Can you bring a child back? Can you give Shayna her lung back?
20 Can you take away Yoni's brain damage? Can you give Shmuel
21 Waldman back his life? What kind of justice can you give?

22 The law says that when we are injured we are entitled
23 to be made whole. That is what the United States Congress has
24 demanded. How can you make these families whole? Judge
25 Daniels will tell you that you have the power and the duty to

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Summation - Mr. Yalowitz

1 award damages for the injuries caused by these defendants'
2 misconduct. That is the only kind of justice available in this
3 courtroom.

4 Now there's no amount of money that a wife or a father
5 or a child or a brother or a sister would accept if offered in
6 exchange for the life of a loved one or the health of a loved
7 one or the happiness of a loved one. But if the only thing
8 that you can give them is money, money has to stand in for
9 compensation for unspeakable loss. And I know you will not let
10 these families receive only part of what they lost.

11 How do you figure those amounts? What is fair in the
12 context of this case? Scotty Goldberg's kids talked about his
13 smile, that million dollar smile. They talked about his
14 embrace, they talked about how important he was even to picking
15 a spouse in their community. You can't give them back Chana
16 day. You can't give them back Shifa day. You can't give them
17 back that walk around town looking for that sandwich, looking
18 for that kid who left his sandwich at home.

19 But don't leave anything out to compensate them for
20 those losses. The law supports and requires damages for
21 physical injury, for pain and suffering, for mental anguish,
22 for expenses, for loss of love and companionship, for past and
23 future lost earnings, for shock, for all injuries and
24 disabilities sustained from the terrorist attack.

25 Now I would like to offer you a framework for thinking

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Summation - Mr. Yalowitz

1 about damages in this case, because you have a lot of people
2 that you're going to need to think about. And that binder with
3 the families and the summaries is going to be very helpful to
4 you in keeping track of who is who. The amount of money that
5 you award as damages is your decision. All I can do is give
6 you my recommendation. What you decide might be higher or
7 lower than what I recommend.

8 The way I would like you to think about these damages
9 is I would like you to think about compensating the parent for
10 the loss of a child at \$15 million. You may choose a higher
11 number, you may choose a lower number, that's entirely up to
12 you.

13 I would like you to think about compensating a spouse
14 who lost the love and companionship at \$15 million.

15 I would like you to think about a child who lost that
16 parental guidance at \$12 million.

17 And I would like you to think about the loss of a
18 sibling at seven and a half million dollars.

19 Now we also have plaintiffs whose loved ones survived.
20 And a parent or child whose loved one survived a shooting or
21 bombing, I would like you to give \$2.5 million.

22 We have a spouse, Henna Waldman, whose life was
23 forever altered by terror. I would like you to give her \$6
24 million.

25 And we have a lot of siblings, I think the \$2 million

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Summation - Mr. Yalowitz

1 level is the right number for those siblings.

2 As we talk about the families, keep those figures in
3 mind. Think about Yoni Bauer, who was seven years old. Yoni
4 took a screw to the head, convulsions, paralysis, blindness,
5 emergency rooms, ICUs, therapy, brain surgery, more brain
6 surgery, learned to talk again, learned to walk again. And
7 where did he get back to? You saw Yoni with your own eyes.
8 You heard him talk with your own ears. Yoni is 20 years old.
9 Yoni has another 60 years of expected life. How is Yoni going
10 to earn a living? How is Yoni going to find a mate in life?
11 How is Yoni going to lead a family? Yoni was a double
12 survivor. It wasn't just him that day, his father was blown
13 up, too. Think about what that does to a little boy. Think
14 about the insecurity. Think about the permanent change and the
15 loss of innocence at seven years old that happens when your
16 parent can't protect you from a suicide bomber. The amount you
17 award to Yoni is up to you. But when you combine his physical
18 injuries and his emotional injuries, his losses of all kinds,
19 including the fact that his father was with him, I recommend
20 that you award \$19.5 million.

21 Alan was with Yoni that day. Look at what Alan lives
22 with.

23 (Continued on next page)
24
25

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Summation - Mr. Yalowitz

1 The physical pain that he went through with skin
2 grafts and surgeries. And as we said on the first day, you and
3 I know sometimes the worst scars are the ones we carry inside.
4 A father who took his son home by the hand on a path that led
5 to a suicide bomber. Think about the guilt that he carries.
6 Alan sat on the witness stand and he said Yoni is a good boy,
7 and he hopes some day Yoni will be able to get a driver's
8 license. That is Alan's dream for Yoni.

9 When you combine Alan's injuries, I recommend that you
10 award Alan \$11.5 million.

11 Now, what about Yoni's siblings, Alan's children? In
12 a way, they are double survivors too. Their whole lives were
13 turned upside down. They have lost that security too. Terror
14 has cost them too. The amount you award them is up to you. I
15 recommend \$2.5 million for Binyamin. I recommend \$2.5 million
16 for Daniel. I recommend \$2.5 million for Yehuda.

17 Let's talk about Shayna. Shayna was shot in the chest
18 by a PA police officer with an M-16 rifle. Shayna was dead on
19 arrival at the hospital. She lost ribs. She lost a lung. You
20 heard about the severe pain that she went through. You heard
21 about her long hospital day. Five pounds of scar tissue
22 removed from her body in reconstructive surgery. She was in so
23 much pain the doctors couldn't believe how much medication she
24 had to take. Her memory has been affected. For Shayna, who
25 was 20 years old, it's never going to be over. You saw that

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Summation - Mr. Yalowitz

1 with your own eyes when Shayna sat and testified. We brought
2 you \$700,000 of lost earnings in the economist's testimony. I
3 recommend you award Shayna \$15.7 million as fair compensation
4 for her losses.

5 What about Shayna's family? What about her sister who
6 raced to her bedside to tell her, I didn't come this far to
7 watch you die. She gave up her life too that day. All those
8 years of caring for her sister. Her own husband couldn't share
9 her bed because she was caring for Shayna. That's how bad
10 Shayna was in shape. Flying across the world, not knowing what
11 her situation was going to be, being told you might not get
12 back the same girl, nursing her through that terrible recovery,
13 living with terror every single day for the rest of your life.
14 I recommend that you award Jessica \$2 million. And I recommend
15 that you award Ron and Elise \$2.5 million as fair compensation
16 for the heinous injuries that the defendants imposed on them.

17 Let's go to Shmuel. Shmuel was shot that same day.
18 He was on his way home to meet his beautiful wife. She was
19 waiting for him with a romantic dinner. He heard that scream,
20 Allahu Akbar. He prepared himself for death, but death didn't
21 come. Leg surgeries, needles, shots, therapy, darkness. That
22 man lives in darkness because of what these people did to him.
23 He lost his business. He is not the parent he wants to be. He
24 is not the husband he wants to be. I recommend that you award
25 Shmuel Waldman \$12 million.

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Summation - Mr. Yalowitz

1 What about Henna? You heard the testimony that Henna
2 had prepared that beautiful dinner. Two weeks later they came
3 home to a plate of mashed potatoes in the shape of a heart
4 moldy because she had not left that hospital. She was a wife
5 until January 22, 2002, and then she became a nurse. She took
6 care of that man through thick and thin. Who among us would
7 trade places with Henna for any amount of money? I recommend
8 that you award her \$6 million.

9 And what about Shmuel's dad, Morris? Morris was
10 driving his father to the hospital when he got the news. He
11 has carried that son. He financed a business that failed. He
12 paid the medical bills for him to try to get the treatment he
13 needed in that darkest moment. What kind of a parent wouldn't
14 do those things? Who among us would trade places with him for
15 any amount of money? I recommend that you award Morris \$2-1/2
16 million.

17 Let's talk about our Sokolow family. That family that
18 survived 9/11 and said, We will not let terror intimidate us.
19 We will stand up to terror. And then they got blown apart by a
20 suicide bomber sent from the Mukataa, from the Mukataa.

21 Rena saw the head of the suicide terrorist. And then
22 the fear, the uncertainty, not knowing where the family was.
23 The family was literally blown apart, and in surgery,
24 conscious, with the saws, and not knowing is she going to lose
25 her leg. And then coming home and the physical therapy and the

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Summation - Mr. Yalowitz

1 pain and the breakdown. She got to the point she couldn't go
2 on. Rena was not just a survivor that day. She was the mother
3 of a survivor. She was the wife of a survivor. I recommend
4 that you award Rena \$14 million.

5 Let's talk about Jamie. Jamie was 12 years old. Her
6 face was filled with shrapnel. She had to have shrapnel
7 removed from her eye and she didn't have a parent there to be
8 with her. Today Jamie is a young woman in her 20s, and she has
9 already had cataract surgery. What does that do to a 12 year
10 old? I recommend that you award Jamie \$11.5 million.

11 Let's talk about Mark. Mark went from being the
12 parent, provider, protector, to being a victim in that moment.
13 He was so frantic, he left the ambulance trying to find his
14 family. He can't concentrate. He withdrew. His ears got
15 blown out. It's always with him. Not a day goes by that he
16 doesn't think of Wafa Idris and what she did to his family with
17 that bomb that she got in the Mukataa. I recommend that you
18 award Mark \$11 million.

19 Let's talk about Lauren, 15 years old. Terrified.
20 Her sister said when she saw her, she looked like she had been
21 electrocuted. She was so scared, she went home immediately.
22 As soon as she could get out of that hospital she went home.
23 Shrapnel, fear, PTSD. I recommend that you award Lauren
24 Sokolow \$10.5 million.

25 Let's talk about Elana. Elana was the one they were

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Summation - Mr. Yalowitz

1 going to visit. Elana was the one studying abroad for a year.
2 Elana was the one who wasn't there. What does she carry every
3 single day, every single day, because of what these people did
4 to her family?

5 MR. ROCHON: Your Honor, I would ask counsel to
6 address the jury instead of my clients.

7 MR. YALOWITZ: I am speaking to the jury, your Honor.
8 I think they understand that.

9 THE COURT: Mr. Yalowitz, stop pointing and saying
10 "these people."

11 MR. YALOWITZ: I recommend that you award Elana \$4
12 million.

13 Let's talk about Rabbi Mandelkorn. What that man has
14 gone through, what his dreams were for his son. His son was a
15 leader. He was a star. Great things were expected of that boy
16 until he walked into a suicide terrorist. 40 days in the
17 hospital, scars, surgeries, pain, screaming. And as bad as his
18 physical injuries were, the emotional injuries were worse.
19 Horrific PTSD. You heard Dr. Peri come and talk about how bad
20 it was and how his concerned father was the one who reached out
21 to try to get that boy help. How his father had to take him in
22 the ambulance because his panic attacks were so bad. His
23 father has a broken heart. I recommend that you award Rabbi
24 Mandelkorn \$2.5 million.

25 Let's talk about the Blutstein family. Ben Blutstein

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Summation - Mr. Yalowitz

1 turned his life around. Ben had trouble with drugs. He joined
2 NA. And he finally found what he wanted to do. He wanted to
3 help people. He was on his way home. He just had to stop off
4 and take a test when his life was cut short. And you heard his
5 mother talk about that girl from NA who came that day and told
6 her that Ben had saved her life.

7 That's what they took away. They took away somebody
8 who was going to save lives. They took away somebody who was
9 going to turn people around. What kind of a loss is that for a
10 parent? Who can ever recover from such a loss? I recommend
11 that you award Ben's parents \$15 million each. And I recommend
12 you award Ben's sister \$7-1/2 million.

13 Now, Ben's estate is also a plaintiff, and there is a
14 line for you to fill out something for the estate too based on
15 the evidence, and I am leaving that up to you. I trust you to
16 make the right decision on that based on the evidence before
17 you.

18 Let's talk about David Gritz, whose parents found out
19 from the morning news, who spent the day searching, fearing the
20 worst, until their worst fears came to pass. They were in New
21 York. Their only child.

22 You heard about Nevenka. She is ready to die. She is
23 alone in the world. She says she has nothing to live for
24 anymore. And you heard about Norman who passed three years
25 after David. Norman, who spent three years poring over David's

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Summation - Mr. Yalowitz

1 journals. Norman, who spent three years writing about David,
2 thinking about David. All the life sucked out of him. Before
3 David died, Nevenka had never been to Jerusalem, but now she
4 goes there. What do you think she is searching for?

5 I recommend that you award Nevenka \$15 million. I
6 recommend that you award Nevenka as successor to Norman \$15
7 million. And I leave it to you for an award for David's
8 estate.

9 Let's talk about Janis Coulter. Janis lived in
10 Brooklyn. She went to Jerusalem for a three-day business trip.
11 Apple of her father's eye. Best friend of her sister who came
12 here today to stand up for Janis, best friend. Her dad got so
13 sick with grief he turned to alcohol to numb the pain. We all
14 saw his pain together. It's 13 years and that man has not
15 recovered, and no parent can recover from a loss like that. I
16 recommend that you award Mr. Coulter \$15 million. And I
17 recommend that you award Janis's siblings 7-1/2 million.
18 Nothing worse has ever happened to this family.

19 Let's talk about Larry Carter. Larry, who came here
20 to tell us his story. Larry gave powerful testimony, a
21 powerful testament to his love for his daughter. So much pain.
22 Larry said that his hope died that day. What do you do for a
23 parent who has that much grief? I recommend that you award
24 Larry \$15 million.

25 Larry talked about Diane's sister, Shaun. Shaun's

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Summation - Mr. Yalowitz

1 grief was complete shock and denial. I recommend that you
2 award Shaun \$7-1/2 million.

3 Now we talk about the Goldberg family. That big,
4 beautiful singing family, torn apart by terror. Such a
5 beautiful family. Such a close-knit family. He was the glue.
6 Everything was fun, everything was a joy, everything was
7 beautiful, until 8:48 a.m., Thursday, January 29. A widow and
8 seven children. They told their stories so much more
9 powerfully than I can tell their stories.

10 For Karen it was second by second. It wasn't day to
11 day. It wasn't minute to minute. It was second to second. So
12 many kids with so many problems. We brought you an economist
13 who told you about Karen's lost wages too. For Karen, I
14 recommend that you award her \$15.8 million.

15 Let's talk about Chana. Oh, Chana. Chana is the
16 oldest. She was the right-hand man. She was the one who went
17 to the police station with her mom to gather their father's
18 things. Until the day came when they had to close down the
19 office and it broke her, it just broke her. And you heard this
20 family explain about their community, which is different from
21 ours, about the importance of a father in that community.

22 Now, there is no community where a father is
23 unimportant. There is no community where a father is
24 unimportant. But where the boys and girls are separated, where
25 the father has roles that the mother can't step into, that

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Summation - Mr. Yalowitz

1 exacerbates the loss, and that exacerbated the loss for Chana,
2 as we all saw. For Chana, I recommend that you award her \$12
3 million.

4 Let's talk about Esther, who came here today to stand
5 up for her father. When Chana broke down, Esther took over as
6 her mom's right-hand man. You heard Esther's stories. You
7 heard Esther, so eloquent, so powerful, so much loss. Esther
8 said it much better than I could. Everything was a wreck. I
9 recommend that you award Esther \$12 million.

10 Let's talk about Yitzhak. Yitzhak was 12 years old.
11 He was at an age in his community that was still very tender,
12 and what was thrust upon him was more than he could bear. He
13 was expected to be a parent at 12 years old, and it broke him.
14 And he left the community. He went from a boy who went every
15 day with his father to that synagogue to a boy who never goes,
16 never goes. Yitzhak has it so bad he couldn't barely speak
17 when he came to talk to us. I recommend you award Yitzhak \$12
18 million.

19 Let's talk about Shoshana. Shoshana was 10 years old.
20 Oh, Shoshana. She used to go to the other families' houses and
21 stand by the side while the father gave a blessing to the
22 children. She was so sad she couldn't stay in the house. She
23 used to run away, ten years old. She couldn't stay. Today
24 Shoshana rides the bus two hours each way because she doesn't
25 want to be away from her family in case something happens. I

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Summation - Mr. Yalowitz

1 recommend that you award Shoshana \$12 million.

2 Let's talk about Eliezer. Eliezer was broken.
3 Eliezer was depressed, even to this day. I recommend that you
4 award Eliezer \$12 million.

5 Let's talk about Yaakov. Yaakov was four years old
6 when his father was murdered, four years old. And he went into
7 a trance, and that was what he said, that was all he could say.
8 You heard his mother talking about how needy Yaakov and Eliezer
9 and Zvi are even today. They are so needy of their family
10 because of what happened to them. I recommend that you award
11 Yaakov \$12 million.

12 Let's talk about Zvi. Zvi was a baby. He couldn't
13 even talk. And when he heard the sound on tape of his father's
14 voice, he would bang his head on the floor. And when he began
15 to speak late, his first words were about his father. He
16 asked, Who killed my father? And today that child speaks of
17 death more frequently than he speaks of life. I recommend that
18 you award Zvi \$12 million.

19 I have said a lot. I have tried to tell the stories
20 of these families as best I can. The truth is their words and
21 their images are the most powerful testimony and the most
22 powerful testament.

23 I want to leave you with their words, ladies and
24 gentlemen. This is terror.

25 (Videotape played)

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1 MR. YALOWITZ: Thank you.

2 THE COURT: Ladies and gentlemen, it's late so we are
3 going to adjourn for the day. It's been a long day.

4 What I am going to do is ask you to be here tomorrow
5 morning at 9:30. As soon as you arrive, I am going to give you
6 instructions on the law. My instructions should take about 45,
7 50 minutes, and then I am going to send you right in to begin
8 your deliberations. We will take your lunch orders when you
9 first arrive, and I will try to get you in as quickly as
10 possible.

11 I will see you at 9:30. Get a good night's rest and I
12 will see you tomorrow morning. Don't discuss the case. Keep
13 an open mind until I finally instruct you on the law and you
14 begin your deliberations.

15 (Jury exits courtroom)

16 THE COURT: I will see everyone tomorrow morning at
17 9:30.

18 (Adjourned to February 20, 2015, at 9:30 a.m.)
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